

In Th Matter Of:

UNITHERM FOOD SYSTEMS v. SWIFT-ECKRICH

**** CONTAINS ATTORNEYS' EYES ONLY PORTIONS ****

CHRISTOPHER SALM

February 13, 2002

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[1] UNITED STATES DISTRICT COURT
[2] WESTERN DISTRICT OF OKLAHOMA
[3] UNITHERM FOOD SYSTEMS, INC.,)
[4] an Illinois corporation, and)
[5] JENNIE-O-FOODS, INC., a)
[6] Minnesota corporation,)
[7] Plaintiffs,)
[8] vs.) No. CIV 01-347-C
[9] SWIFT-ECKRICH, INC., d/b/a)
[10] CONAGRA REFRIGERATED FOODS,)
[11] a Delaware corporation,)
[12] Defendant.)
[13]
[14] THIS DEPOSITION CONTAINS CONFIDENTIAL
[15] ATTORNEYS' EYES ONLY MATERIAL
[16]
[17] The continued deposition of CHRISTOPHER
[18] SALM, called for examination, taken before GAIL
[19] LIVIGNI, a Notary Public within and for the County
[20] of Will, State of Illinois, and a Certified
[21] Shorthand Reporter of said state, at Suite 200, 184
[22] Schuman Boulevard, Naperville, Illinois, taken on
[23] the 13th day of February, A.D., 2002, at 9:00
[24] o'clock a.m.

[1] **MR. SCHROEDER:** You asked me whether we can
[2] adopt the testimony of Prem Singh as to certain of
[3] the topics that have been listed on Exhibit A as to
[4] this 30(b)(6) deposition and therefore eliminate
[5] the need to go through those topics with Dr. Salm.
[6] And after looking them over, I've
[7] identified certain topics as to which we can rely
[8] on — or we will adopt the testimony of Prem Singh
[9] with one proviso, and that is I haven't had an
[10] opportunity to review the Prem Singh transcript,
[11] which I don't have with me, and I don't know
[12] whether there may be instances as to these topics
[13] in which Mr. Singh said that he didn't know, and we
[14] can't be precluded from introducing evidence of
[15] what other people know if you've asked Prem Singh a
[16] question and he didn't know.
[17] So with the exception that we would
[18] reserve the right to supplement his testimony in
[19] the event that he said that he didn't know the
[20] answer, then we could adopt his testimony as to
[21] certain categories. So, in other words, we
[22] wouldn't contradict that testimony, but we would
[23] supplement it if he didn't know the answer. Is
[24] that helpful?

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[1] PRESENT:
[2] FELLERS, SNIDER, BLANKENSHIP, BAILEY &
[3] TIPPENS, P.C.,
[4] (100 North Broadway, Suite 1700,
[5] Oklahoma City, Oklahoma 73102-8820
[6] 405-232-0621), by:
[7] MR. GREG A. CASTRO,
[8] appeared on behalf of the Plaintiffs,
[9]
[10] CHRISTIE, PARKER & HALE, LLP,
[11] (350 West Colorado Boulevard, Suite 500
[12] Pasadena, California 91109-7068
[13] 626-795-9900), by:
[14] MR. ROBERT A. SCHROEDER,
[15] appeared on behalf of the Defendants;
[16]
[17] ALSO PRESENT:
[18] MS. LESLIE E. NASH, Paralegal
[19] Christie, Parker & Hale, LLP.
[20]
[21] REPORTED BY: GAIL LIVIGNI, C.S.R.
[22] CERTIFICATE NO. 84-1965
[23]
[24]

[1] **MR. CASTRO:** That's helpful and that's
[2] agreeable with one proviso from my end. I may ask
[3] Mr. Salm follow-up questions as to Prem's testimony
[4] to clarify or to more fully explain certain areas,
[5] if he can.
[6] **MR. SCHROEDER:** All right.
[7] **MR. CASTRO:** If Mr. Salm can, but I think it
[8] will alleviate some of the obviously lack of
[9] firsthand knowledge by Mr. Salm as to conception,
[10] development, things such as that.
[11] **MR. SCHROEDER:** Let me identify the areas with
[12] reference to Exhibit A. It would be 1, 2, 3, 12,
[13] 14, 17, 26, and that's it.
[14] **CHRISTOPHER SALM,**
[15] called as a witness herein, having been first duly
[16] sworn, was examined further and testified as
[17] follows:
[18] **EXAMINATION**
[19] **BY MR. CASTRO:**
[20] **Q:** What are LAB values, Mr. Salm?
[21] **A:** As far as I understand it, LAB values
[22] are numbers that are generated from the Hunter
[23] color measuring instrument and represent a color
[24] measurement.

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- [1] Q: What is that Hunter color measurement?
 [2] Is that just a card that has scales of color and
 [3] under those colors are numbers? Tell me what that
 [4] is.
 [5] A: Actually, no, it measures reflectants.
 [6] It's basically the absorption of wave lengths on
 [7] the product and reflectants of wave lengths on the
 [8] product, and the Hunter color measurement system
 [9] measures that reflectance and then determines a L,
 [10] A and B value based on those reflectances.
 [11] Q: So it's a machine?
 [12] A: Yes.
 [13] Q: Someone who has never seen that machine,
 [14] do you put the product in the machine, or you do
 [15] you put it on top of it? Explain that to me.
 [16] A: Actually the machine that we use is a
 [17] wand, so you've got a base and then you've got a
 [18] wand that you can point at the product.
 [19] Q: So you — when it comes out — when do
 [20] you usually apply that wand to your turkey products
 [21] to check on the LAB value?
 [22] A: You can do it at any time.
 [23] Q: Obviously not while it's in the oven.
 [24] Have you ever put it on the product in the oven?

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- [1] like after the chill process, is that fair to say?
 [2] A: Yes.
 [3] Q: Okay. And how long is that chill
 [4] process? Explain that from the time it comes out
 [5] of the oven.
 [6] A: The chill process that we're currently
 [7] using is something less than an hour.
 [8] Q: Okay. When you were testing ovens from
 [9] other companies with regards to this whole muscle
 [10] meat product back in 1997 or '98 and you were
 [11] worried about the color, would you use your wand,
 [12] your Hunter color measuring wand, to determine what
 [13] color was derived from using different ovens?
 [14] A: Actually I don't know if it was used in
 [15] every instance.
 [16] Q: Was it used when you visited the
 [17] Unitherm facility in February of 1998?
 [18] A: No.
 [19] Q: Was it used, if you know, when you were
 [20] testing the Unitherm oven for six months in the end
 [21] of '95, '96 at your facility in Downers Grove?
 [22] A: I don't know.
 [23] Q: Who would know that?
 [24] A: I would expect that Prem would know

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- [1] A: Have not put it in the oven, no.
 [2] Q: You haven't held it, have you?
 [3] A: Not in the oven.
 [4] Q: Typically if you want to check what that
 [5] color is pursuant to this LAB value, you wait until
 [6] the product comes out of the oven, let's say the
 [7] second zone, is that fair enough? Do you have a
 [8] two zone oven with your whole muscle meat products?
 [9] A: Actually it's a multi-stage system.
 [10] When you check the color, you can check it after it
 [11] comes out. You can check it after you go through
 [12] the chill system. You can check it after its in
 [13] shelf life.
 [14] Q: All right. Which do you usually do?
 [15] Any time I mention you, I'm talking about Conagra.
 [16] You may not be the one that actually does it, but
 [17] when do you typically check for LAB value?
 [18] A: After it comes out of the chill.
 [19] Q: Why is that?
 [20] A: Well, because it's relatively stable at
 [21] that point.
 [22] Q: So there is not an issue of the color
 [23] changing after five or seven days of shelf life?
 [24] That's not your concern so much as what it looks

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- [1] that.
 [2] Q: Do you know whether Prem even used that
 [3] wand that — you don't know whether Prem used that
 [4] wand, do you?
 [5] A: I know that it was used on a number of
 [6] occasions. I just don't know if it was
 [7] specifically used during that time frame.
 [8] Q: Would anyone else know whether that wand
 [9] was used during that time frame or in 1998 when you
 [10] visited the Unitherm facility?
 [11] A: Prem would know if it was used during
 [12] that time frame in '95, '96 with the Unitherm oven
 [13] that was in the pilot plant. And Prem would also
 [14] know if it was used during our February visit to
 [15] the Unitherm facility in February of '98.
 [16] Q: Do you know whether that wand was used
 [17] in September of 1993 or February or January of 1994
 [18] when product was run through Mr. Howard's Unitherm
 [19] oven, your product was run through the Unitherm
 [20] oven?
 [21] A: I don't know exactly, no.
 [22] Q: You don't know?
 [23] A: Correct.
 [24] Q: Who would know?

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[1] A: Let's see, Syed would likely know if he
[2] used the Hunter color instrument in '94. Was there
[3] another part of that?
[4] Q: No. Would anyone know in '93? Would it
[5] be Syed as well since he's the one that sent the
[6] product or took the product to their facility?
[7] A: Syed would know in '93 as well.
[8] Q: When did you start using this Hunter
[9] color measuring device? Am I describing that
[10] properly? Is it called the Hunter color —
[11] A: Colorimeter.
[12] Q: Hunter colorimeter?
[13] A: Yes.
[14] Q: How long have you been using the Hunter
[15] colorimeter?
[16] A: I know I started with the company in
[17] '89, and I believe that our analytical lab had the
[18] Hunter colorimeter in the analytical lab for doing
[19] color measurement at that time.
[20] Q: The what, the analytical lab?
[21] A: Yes.
[22] Q: What's the analytical lab?
[23] A: The analytical lab in our laboratory,
[24] product development lab, was a chemistry lab, and

[1] that is, and I believe that to be true.
[2] Q: Is there anyone who is a Hunter
[3] colorimeter expert in Conagra?
[4] A: I know that Prem knows a lot about the
[5] Hunter colorimeter system.
[6] Q: How do you know that?
[7] A: Because I've talked with him about it.
[8] Q: When did you talk with him about the
[9] Hunter colorimeter?
[10] A: A number of occasions.
[11] Q: Starting what date?
[12] A: Probably '97.
[13] Q: Okay. But you don't know whether
[14] Mr. Singh used the Hunter colorimeter to determine
[15] color values of the whole muscle meat products that
[16] were being produced up to 1997, do you?
[17] A: I don't know.
[18] Q: Do you know whether he used the Hunter
[19] colorimeter — the Hunter wand, can I say that?
[20] A: Yes, you can.
[21] Q: Do you know whether he used the Hunter
[22] wand to determine color values of his whole muscle
[23] meat products that were being produced by Conagra
[24] after 1997?

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[1] they did other analytical tests.
[2] Q: Well, did they check the color of the
[3] whole muscle meat product that was being produced
[4] at that time?
[5] A: I don't know.
[6] Q: Did they check the color of the slice
[7] and serve product that you were producing at that
[8] time?
[9] A: I don't know.
[10] Q: Wouldn't it be fair to say that they
[11] were probably trying to obtain a color for the
[12] slice and serve based upon visual testing versus
[13] this Hunter color meter?
[14] A: It's possible.
[15] Q: The same would hold true for 1993 when
[16] they were trying to derive a certain color of a
[17] meat product?
[18] A: It's possible.
[19] Q: On the LAB, what does the L stand for?
[20] A: The L is a measure of basically from
[21] white to black, 0 being black and 100 being white.
[22] Q: So it goes to 0 to a 100?
[23] A: Yes. Now, I'm not a Hunter colorimeter
[24] expert, and that's just my recollection of what

[1] A: Yes.
[2] Q: What products?
[3] A: I know that he used it on the Golden
[4] Brown deli products.
[5] Q: Any other products? Are those broken
[6] down into categories, this Golden Brown deli
[7] product? Is that just one UPC code?
[8] A: Actually there are — the answer to the
[9] question is no, but there actually are, I think,
[10] three.
[11] Q: Okay. What are those three categories?
[12] A: We have a Butterball Golden Oven Roasted
[13] product that's in a two pack case, and we have a
[14] Butterball Golden Oven Roasted product that's in a
[15] three pack case — or a one pack case, and we have
[16] a Healthy Choice Golden Oven Roasted, and I believe
[17] that that's in a two pack case, but I couldn't tell
[18] you that for sure.
[19] Q: So really essentially two products but
[20] the Butterball are just packaged differently,
[21] correct? I mean there is a Butterball Oven Roasted
[22] and then there is a Healthy Choice Golden Oven
[23] Roasted, correct?
[24] A: There is a Butterball Golden Oven Roast

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[1] and a Healthy Choice Golden Oven Roast, yes.
[2] Q: That colorimeter is not used for any
[3] other product?
[4] A: No, we use it for other products as
[5] well. Prem doesn't use it, but we do.
[6] Q: It's not used for any other whole muscle
[7] meat product that's produced by Conagra?
[8] A: Yes, it is.
[9] Q: What other whole muscle meat product?
[10] A: We have used it on the Butterball fresh
[11] tray pack product line, and that's just an
[12] indication of color intensity over time.
[13] Q: What's the difference between the
[14] Butterball fresh tray pack and the Butterball Oven
[15] Roasted product? Is there a difference in
[16] characteristics?
[17] A: The Butterball Golden Oven Roasted is a
[18] pre-cooked whole muscle meat product.
[19] Q: Okay.
[20] A: That's sold in the deli, and the
[21] Butterball fresh tray pack product is uncooked and
[22] it's sold in the meat case.
[23] Q: Do you use this Hunter wand for any of
[24] the products that are produced pursuant to the '027

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[1] reference chip, and then we take the color
[2] reference chip and use that.
[3] Q: Okay. How do you do that?
[4] A: What do you mean how do you do that?
[5] Q: How do you do that? How do you
[6] produce — how do you get this color reference chip
[7] and match it to the Hunter wand values?
[8] A: It's either with a photograph or a color
[9] paint swatch.
[10] Q: What product do you produce to match it
[11] up, or do you just take paint? Do you produce a
[12] product and then match it, put the Hunter color
[13] meter to it and make sure that the product matches
[14] up to the Hunter color meter and then try to paint
[15] the color, or tell me how you get this color that's
[16] the key for the Jonesboro plant?
[17] A: Yes. So you take a product, you have a
[18] reference product. You know that the reference
[19] product falls within our Golden Brown reference,
[20] and that reference product then is matched up
[21] either with a photograph or with a color swatch,
[22] and I'm not sure which way they've done it.
[23] So that we know that the reference
[24] product is our Golden Brown product that we desire,

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[1] Patent?
[2] A: I don't know if the Jonesboro plant is
[3] using the Hunter color system as a quality check or
[4] if we gave them color chips. Most times what we do
[5] with the plant is we give them color reference
[6] chips.
[7] Q: What do you mean by color chips? I mean
[8] a piece of product, or what are you talking about?
[9] A: It can either be a photograph, or it can
[10] be a painted —
[11] Q: Just like a paint swatch when you're
[12] painting your house?
[13] A: Yes.
[14] Q: Okay. So, you know, you don't have to
[15] have this wand to produce a product that falls
[16] within the claims of that '027 Patent, correct?
[17] A: That is correct.
[18] Q: Okay. You're lawyer yesterday asked
[19] Mr. Hussain a technical question about having this
[20] Hunter wand and how the values have to match up,
[21] the color values match up to that wand, but you
[22] don't use the wand to match the colors to the
[23] product produced by the '027 Patent, correct?
[24] A: We use the wand to determine the color

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[1] and then we know that the color swatch or the
[2] photograph match up with that reference product.
[3] Q: How long have you been producing whole
[4] muscle meat product which falls within the '027
[5] Patent at the Jonesboro plant?
[6] A: Since December of 1998.
[7] Q: Who was the manager of that facility at
[8] that time?
[9] A: I believe the plant manager was Tad
[10] Brubaker.
[11] Q: Ted Brubaker?
[12] A: Tad.
[13] Q: Tad. Was he responsible for ensuring
[14] that the product produced at the Jonesboro plant
[15] matched up with this swatch or picture? I
[16] characterized that fairly, didn't I?
[17] A: Yes.
[18] Q: Okay. Was he responsible for that?
[19] A: Yes.
[20] Q: Is he still the plant manager of the
[21] Jonesboro plant?
[22] A: No.
[23] Q: Tell me in succession who replaced him
[24] to the present day?

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[1] A: Daryl Wieck is the current plant
[2] manager, and he replaced Tad.
[3] Q: How do you spell his last name?
[4] A: I believe it's W-i-e-c-k.
[5] Q: Jonesboro, where is that located?
[6] A: Jonesboro is in —
[7] Q: I keep hearing Jonesboro, but I am not
[8] sure which state it's in.
[9] A: Arkansas about hour and a half or two
[10] hours from Memphis.
[11] Q: Tad Brubaker, does he still work for the
[12] company?
[13] A: Yes.
[14] Q: And where is he located?
[15] A: Tad is now in our Downers Grove office.
[16] Q: What does he do now for the company?
[17] A: Tad is a director of manufacturing and
[18] has responsibility for a number of plants.
[19] Q: If you know, is this Hunter color meter
[20] something that's accepted in the industry as a tool
[21] for determining color?
[22] A: Yes.
[23] Q: Do you know how many other companies use
[24] the Hunter wand?

[1] believe that's true.
[2] Q: And then the B?
[3] A: And the B goes from blue to, I believe,
[4] yellow with a blue being a negative number and a
[5] yellow being a positive number.
[6] Q: So when you — how does it measure when
[7] you put the Hunter wand over a meat product? How
[8] long do you have to keep it on the meat product and
[9] then what's the readout?
[10] A: It's nearly instantaneous.
[11] Q: Okay.
[12] A: And the readout would be as L, A and B
[13] values.
[14] Q: There would be an L and there would have
[15] a number between 0 and 100. Then there would be an
[16] A, and it would be in the negative or positive, or
[17] would it be a negative — a degree of negative and
[18] a degree of positive for the A?
[19] A: It would be one number.
[20] Q: Well, what's the LAB value for this
[21] Golden Brown?
[22] A: I believe —
[23] Q: Do you know?
[24] A: I could get pretty close.

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[1] A: No.
[2] Q: How do you know it's accepted in the
[3] industry?
[4] A: I know that the people at Oscar Mayer
[5] are very familiar with it.
[6] Q: Do you know whether they use it?
[7] A: I don't.
[8] Q: Who else?
[9] A: I don't know of anybody else in the
[10] industry.
[11] Q: Okay. What does the A mean for this LAB
[12] value?
[13] I'm sorry, let me go back for a minute.
[14] I'm a little slow. The L — this is like an
[15] acronym. Does that mean light, the L mean light so
[16] that 0 is black and 100 is white?
[17] A: I don't know.
[18] Q: You don't know, okay. What about the A
[19] now?
[20] A: The A is a measure of color as it goes
[21] from — I believe this is correct, and I don't know
[22] for sure — from green to red. So a green value
[23] would be a negative number and a more red value
[24] would be a positive number. And that's — I

[1] Q: What is it?
[2] A: I believe the L value is somewhere
[3] around 50. It's 40 to 50. And I believe the A
[4] value is — and these might be mixed. The A value
[5] is around 10 to 12, and the B value is around 30,
[6] 28 to 30, and that might be — they might be
[7] switched.
[8] Q: What do you mean they might be switched?
[9] Do you mean the L may actually be 10 to 12 and the
[10] B may be 40 to 50?
[11] A: Would you like me to refer to the
[12] patent?
[13] Q: No, I am asking you.
[14] A: To look at the numbers?
[15] Q: Does the patent in your view have the
[16] LAB values that produce — that are produced by
[17] this process?
[18] A: Yes.
[19] Q: That's okay. When was the last time you
[20] looked at that patent, the '027 Patent?
[21] A: I looked at it very briefly yesterday.
[22] Q: Now, I'm kind of confused because this
[23] A, you say negative to positive, that it measures
[24] color, am I correct, from green to red in value,

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[1] green being negative and red being positive? And
[2] this is someone, as you can tell, who's never seen
[3] a Hunter wand.
[4] A: Sure.
[5] Q: How do you get the number 10 to 12?
[6] A: The number 10 to 12 would represent a
[7] product that has more red tones in it and virtually
[8] no green tones.
[9] Q: But it's not — it's a positive number.
[10] How high do those positive numbers go, do you know?
[11] A: I don't.
[12] Q: Okay. What about the negative? What if
[13] it came out green, what would that number be?
[14] A: If it were —
[15] Q: It just came out green.
[16] A: It would be something like a negative
[17] 20.
[18] Q: Okay. And then for the B, if it came
[19] out blue, what would the color be?
[20] A: It would be something in the same,
[21] negative 20, negative 30, could be negative 50.
[22] Q: Oh, it could be negative 50? How high
[23] does it go?
[24] A: I don't know that.

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[1] Q: What about for B?
[2] A: I've not seen a completely yellow
[3] product.
[4] Q: Well, no, I was talking about the green.
[5] I mean how high do these meters go? How high does
[6] the measurement go in the A value, negative?
[7] A: I don't know that.
[8] Q: How about positive?
[9] A: I don't know that.
[10] Q: What about for the B, how low does it go
[11] negative?
[12] A: I don't know that.
[13] Q: How about how high does it go positive?
[14] A: I don't recall that.
[15] Q: All right. Does anyone at Conagra know
[16] that?
[17] A: I would believe that Prem would know
[18] that.
[19] Q: Okay. Let's look at that Exhibit 1, the
[20] '027 Patent if you don't mind.
[21] A: Sure.
[22] Q: Let's look on the fifth page under
[23] column eight. Tell me under the claims where it
[24] talks about the LAB value of the product produced

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[1] by this patent?
[2] Now, I see in Claim 1, it talks about
[3] develop a Golden Brown color. Where does it state
[4] in the patent under the claims where you have to
[5] establish an LAB value?
[6] A: It does not.
[7] Q: Okay. Who else helped you prepare these
[8] Interrogatory answers? You've listed here — and
[9] those are Exhibit 2. You listed Syed Hussain and
[10] John Shoop and Pie-Yi Wang as to one answer.
[11] A: I did not talk to John Shoop.
[12] Q: Oh, you didn't. You just thought he'd
[13] have information regarding Interrogatory No. 1?
[14] A: Yes.
[15] Q: Who told you he would have information
[16] regarding Interrogatory No. 1?
[17] A: It could have been Syed. It could have
[18] been Prem. It could have been Pie-Yi.
[19] Q: I think I asked you that yesterday,
[20] didn't I?
[21] A: I believe so.
[22] Q: Sorry. What about Pie-Yi Wang — he is
[23] a technician for the company now?
[24] A: Pie-Yi is director of process

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[1] engineering.
[2] Q: Is he going to testify in this case, do
[3] you know?
[4] A: I don't believe so.
[5] Q: Okay. Did anyone else help you prepare
[6] these Answers to Interrogatories?
[7] A: I know that I —
[8] Q: And I ask that because I read the
[9] verification and, it's a little different than I've
[10] seen, and it's pretty — it qualifies some of your
[11] answers, and I want to make sure that those answers
[12] are still the same today.
[13] It says these responses were prepared
[14] with the assistance and advice of employees of and
[15] counsel for said defendant upon whose insistence
[16] and advice I have relied. And it says these
[17] responses, subject to inadvertent and undiscovered
[18] error are based on and therefore necessarily
[19] limited by the records and information still in
[20] existence presently recollected and thus far
[21] discovered in the course of preparation of these
[22] responses. Subject to these limitations, the
[23] responses are true and correct.
[24] Are those Answers to those

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[1] Interrogatories, to the best of your knowledge,
[2] still true and correct?
[3] A: To the best of my knowledge.
[4] Q: Okay. Hasn't been anything that's
[5] changed since September 28th of 2001 which would
[6] cause you to change these Answers to
[7] Interrogatories, correct?
[8] A: I haven't reviewed the Interrogatories
[9] recently, but as I understand them, yes.
[10] Q: You want to take a quick — a minute or
[11] as long as you need to review those and make sure
[12] those are accurate, please.
[13] MR. SCHROEDER: Well, you say a quick minute.
[14] MR. CASTRO: I said as long as he needs. You
[15] know, a minute for me in Oklahoma lasts longer than
[16] in California for you.
[17] MR. SCHROEDER: You must have very long
[18] minutes in Oklahoma.
[19] MR. CASTRO: Off the record for a minute.
[20] (WHEREUPON, discussion was had
[21] off the record.)
[22] BY THE WITNESS:
[23] A: Okay.
[24] BY MR. CASTRO:

[1] MR. SCHROEDER: If you're going to request
[2] documents, I would like you to direct the request
[3] to me and not the witness.
[4] MR. CASTRO: Okay. Well, I was looking at
[5] you, but you were looking at the Interrogatories.
[6] MR. SCHROEDER: Okay. We'll make a search for
[7] that and let you have it if we've got it.
[8] MR. CASTRO: That letter has not been
[9] produced, and we'll get to that in a minute. I
[10] should actually look at Leslie, shouldn't I?
[11] MR. SCHROEDER: Well, Leslie will find the
[12] note. I will decide whether we give it to you.
[13] MR. CASTRO: Well, it's pursuant to a request
[14] for production.
[15] MR. SCHROEDER: I am not saying we're not
[16] going to give it to you. I am talking generally
[17] about any document requests that you've got.
[18] BY MR. CASTRO:
[19] Q: Okay. Anything else?
[20] A: No.
[21] Q: Did you ask Mr. Wang about his visit to
[22] Unitherm's facility in 1993?
[23] A: Yes.
[24] Q: Did he tell you about that and describe

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[1] Q: Have you had a chance to review them,
[2] Mr. Salm?
[3] A: Yes.
[4] Q: Are they still true and correct to the
[5] best of your knowledge?
[6] A: There may be one or two changes.
[7] Q: Could you identify those for me, please?
[8] A: I don't know that we didn't send a note
[9] to Alkar at their request.
[10] Q: What do you mean by note?
[11] A: A license.
[12] Q: An offer to license to Alkar?
[13] A: Yes.
[14] Q: Do you know whether you sent that
[15] letter?
[16] A: I don't.
[17] Q: Is it your testimony that you did send a
[18] letter or that you could have sent a letter?
[19] A: I could have.
[20] Q: Could you review your files for us?
[21] Could we have an agreement that you review your
[22] files to see if you have that letter in your file?
[23] A: Yes.
[24] Q: That letter has not been produced.

[1] that visit?
[2] A: Yes.
[3] Q: And what did he describe to you about
[4] that visit?
[5] A: Pie-Yi Wang actually made two visits to
[6] the Elk Grove Unitherm facility. The first visit
[7] was to inspect some four by four cold cut molds.
[8] And when he was there, he noticed that Unitherm had
[9] an in-line oven, so Pie-Yi thought that he could
[10] use that in-line oven for some testing, and he went
[11] back and tested some liquid smoke on products
[12] through that in-line oven.
[13] Q: When was that?
[14] A: I don't know the exact dates.
[15] Q: How much product did he test with liquid
[16] smoke?
[17] A: I don't know.
[18] Q: Who was there — who was present from
[19] Unitherm during that — now, in other words, he
[20] went initially to inspect cold cut molds, he
[21] noticed the in-line oven, wanted to run some tests
[22] with liquid smoke. So after he left, he obtained
[23] some product, Conagra product, brought it back and
[24] tested it, is that correct?

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[1] A: Yes.
 [2] Q: The first visit, who was present, do you
 [3] know?
 [4] A: I don't know.
 [5] Q: What about the second visit when he ran
 [6] tests?
 [7] A: I don't know all the people that were
 [8] there.
 [9] Q: Do you know any of them?
 [10] A: Pie-Yi Wang.
 [11] Q: Anyone else?
 [12] A: I don't know.
 [13] Q: What about a representative of Red
 [14] Arrow?
 [15] A: I don't know.
 [16] Q: Did he make notes of that visit?
 [17] A: Yes.
 [18] Q: Does he still have those notes?
 [19] A: Yes.
 [20] Q: Have those notes been produced to your
 [21] Counsel?
 [22] A: Yes.
 [23] Q: Are those notes that simply describe the
 [24] test results, or are there also other notes that

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[1] copies and attach one to each deposition
 [2] transcript?
 [3] MR. CASTRO: Right, yes.
 [4] MR. SCHROEDER: That's all right with me.
 [5] BY MR. CASTRO:
 [6] Q: I'll hand you, Mr. Salm, what was marked
 [7] yesterday as another set of test results and see if
 [8] these are the results that you're referring to
 [9] today. That is a set of results dated — by the
 [10] way, the other ones were dated October 14, '93, is
 [11] that correct?
 [12] A: Yes.
 [13] Q: And these were dated September 30th of
 [14] '93. Are those the results that you recall seeing
 [15] from Mr. Wang, that you received from Mr. Wang?
 [16] A: No.
 [17] Q: Are the results, test results that
 [18] you're referring to, do they appear on a form like
 [19] this, or are they on something — or are they in a
 [20] different format?
 [21] A: I don't believe that they're on a form
 [22] like this.
 [23] Q: Are they on a form?
 [24] A: They're handwritten notes, to the best

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[1] deal with who he met with and what else was done?
 [2] A: To the best of my knowledge, they
 [3] describe the test results.
 [4] Q: Are they identified in any manner as
 [5] test results from Unitherm?
 [6] A: I don't know.
 [7] Q: We identified yesterday some exhibits,
 [8] two of which dealt with test results on Unitherm
 [9] product. Do you recall that testimony yesterday
 [10] with Mr. Hussain?
 [11] A: Yes.
 [12] Q: I'm going to hand you what's already
 [13] been marked yesterday — or was marked yesterday in
 [14] Mr. Hussain's deposition as No. 14 and ask you if
 [15] either the first page or second page would be those
 [16] test results of Mr. Wang's visit?
 [17] A: They do not look familiar.
 [18] Q: Okay. We will mark this as —
 [19] MR. CASTRO: Bob, can we have an agreement to
 [20] the extent we have any exhibits that were
 [21] identified yesterday in Mr. Hussain's, we can make
 [22] copies and mark those as an exhibit in this file as
 [23] well?
 [24] MR. SCHROEDER: You want to make two sets of

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[1] of my recollection.
 [2] Q: Do they refer to the Unitherm oven?
 [3] A: I don't recall.
 [4] Q: Do you recall anything else on those
 [5] test results, the results?
 [6] A: I just recall that they were difficult
 [7] to read.
 [8] Q: Before yesterday had you ever seen the
 [9] test results marked in your Exhibits 1 and 2?
 [10] A: I don't recall. I may have.
 [11] Q: As you sit here today, you don't recall
 [12] whether you saw these results in '97 or '98, do
 [13] you?
 [14] A: Correct.
 [15] Q: The Enersyst system, the Enersyst, is
 [16] that the proper pronunciation?
 [17] A: Yes, Enersyst.
 [18] Q: When was that first purchased?
 [19] A: In 1989.
 [20] Q: What was the purpose for Conagra
 [21] acquiring that? Is it a system, or is it just an
 [22] oven? Explain what it is, sir.
 [23] A: There are two Enersyst ovens that were
 [24] purchased in 1989.

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[1] Q: Let me go back for a minute. With the
[2] Wang visit, the second visit — or the first visit,
[3] how long was he there, do you know?
[4] A: I don't know.
[5] Q: What about the second visit, do you know
[6] how long he was there?
[7] A: I don't know.
[8] Q: Did he tell you anything about the
[9] second visit?
[10] A: Yes.
[11] Q: What did he tell you?
[12] A: He said that he ran product through the
[13] oven, and he had to cut product down to fit the
[14] oven and that he used liquid smoke, and that was
[15] about it.
[16] Q: Were the results — did he like the
[17] results?
[18] A: I don't recall that. I don't recall
[19] that.
[20] Q: When did he tell you this?
[21] A: There were a couple of occasions when we
[22] talked with Pie-Yi about the visits. I know that I
[23] talked to him on Monday of this week, and I talked
[24] to him before we prepared the Interrogatory

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[1] responses, and I know I talked to him when we did
[2] the document search specifically regarding the
[3] Unitherm visits.
[4] Q: How many pages — any other time?
[5] A: There could have been.
[6] Q: Did you speak to him before we met with
[7] you and your Counsel in Chicago — how long has it
[8] been now, year and a half, two years?
[9] A: I could have.
[10] Q: How many pages consist of these
[11] handwritten notes?
[12] A: I don't know. A couple. I don't know
[13] exactly.
[14] Q: The Enersyst system, you say there were
[15] two systems, two ovens?
[16] A: We purchased two ovens from Enersyst in
[17] 1989.
[18] Q: What were the purpose of those ovens?
[19] A: To produce heat.
[20] Q: We're going to be here a long time today
[21] if you want to give those kinds of answers. Take
[22] it one way or the other.
[23] A: I'm sorry. They were used to produce
[24] heat, and one oven was put in the pre-drench

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[1] section.
[2] Q: Okay.
[3] A: And one oven was put in the post-drench
[4] section.
[5] Q: Was one used to dry the product and the
[6] other used to brown the product?
[7] A: Yes.
[8] Q: All right. I'm going to hand you what
[9] we'll mark as No. 3. And were these ovens acquired
[10] in order to be installed in this process flow that
[11] I will hand you and mark as No. 3?
[12] A: Yes.
[13] Q: And who told you that?
[14] A: I was there.
[15] Q: You were?
[16] A: Yes.
[17] Q: And that system was installed at the
[18] Wells plant?
[19] A: Yes.
[20] Q: Did you buy anything else from the
[21] Enersyst group for installation in that process
[22] flow?
[23] A: I believe we also bought the chiller.
[24] Q: Okay.

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[1] A: But I don't know that for sure. I think
[2] we did.
[3] Q: What product went through that Enersyst
[4] system in 1989?
[5] A: It's a product that we call slice and
[6] serve. It's a whole muscle turkey breast that
[7] weighs about three and a half pounds.
[8] Q: And did you apply liquid smoke to that
[9] product in 1989?
[10] A: I believe liquid smoke was applied on a
[11] test basis, and the system was set up for
[12] production to use caramel in the dip tank.
[13] Q: But you also used liquid smoke in the
[14] dip tank, correct?
[15] A: Test basis.
[16] Q: What about Maillose, you also used
[17] Maillose, didn't you?
[18] A: Not in 1989.
[19] Q: When did you use Maillose?
[20] A: The Maillose was used in the dip tank, I
[21] believe, in late 1993, early 1994 on a test basis.
[22] Q: You had problems with the Enersyst
[23] system, didn't you?
[24] A: When we first installed the Enersyst

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[1] system, we had one problem for sure.
[2] Q: What was that?
[3] A: The problem was the burners were high
[4] velocity burners and it was difficult to keep them
[5] lit.
[6] Q: Did you produce any other product other
[7] than slice and serve with that Enersyst system in
[8] '89?
[9] A: I don't believe so.
[10] Q: Explain to me — you have the whole
[11] muscle meat turkey breast that's run through the
[12] system. How does it become — and then is it
[13] sliced after it's chilled? Explain that process,
[14] if you would, on the slice and serve.
[15] A: You want me to start from the beginning?
[16] Q: Sure.
[17] A: Okay. The whole muscle turkey breasts
[18] are injected and tumbled, put into a cooking
[19] package. They're placed on racks, put into a smoke
[20] house, cooked.
[21] Q: Not smoked, just cooked?
[22] A: Just cooked.
[23] Q: Okay.
[24] A: They're in the cooking package. They're

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[1] deli counter for sell?
[2] A: That would be a rare instance.
[3] Q: But it was done, correct?
[4] A: I don't know that.
[5] Q: Who would know that?
[6] A: If we had a salesperson who sold a
[7] product to a deli, that salesperson would know
[8] that. But typically these products are sold to the
[9] meat case buyer and put in the meat case.
[10] Q: Are they also sold to the food service
[11] industry?
[12] A: I don't believe so.
[13] Q: But you don't know, do you?
[14] A: I don't know for sure.
[15] Q: What other problems? Did you have
[16] problems with the system with regards to the belts,
[17] other performance problems with it for four or five
[18] months?
[19] A: We had problems with the chiller, and I
[20] believe that was it.
[21] Q: Didn't you have problems with the
[22] conveyor belt tracking unevenly on the
[23] degelatinizer?
[24] A: On the conveyor going through the

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[1] then put in the chill cooler, they're chilled.
[2] After they're chilled, they're brought out to be
[3] stripped. They're washed through the gelatin
[4] washer. They're dried through the Enersyst oven.
[5] They're conveyed through a dip tank with a caramel
[6] solution, and then they're dried again in the
[7] Enersyst oven, and then they're conveyed through
[8] the chiller to a packaging room.
[9] In the packaging room, they're split in
[10] half so you have approximately a pound and three
[11] quarter chunk on each side of the split. That
[12] chunk is then put into a crivac bag, it's
[13] vacuumized, sealed, trimmed, heat shrunk and then
[14] case packed.
[15] Q: And sent to deli counters?
[16] A: Those products are typically sold in the
[17] meat case.
[18] Q: Which would be the deli counter?
[19] A: No.
[20] Q: Or are you talking about over in the
[21] refrigerated area where you go and you pick out
[22] product yourself?
[23] A: Correct.
[24] Q: Are some of those products sent to the

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[1] gelatinizer?
[2] Q: That's right.
[3] A: That's possible. I don't know that.
[4] Q: What about the dryer, did you have
[5] problems with the pressor switches not closing
[6] properly?
[7] A: I believe that that's related to keeping
[8] the flame lit, and I mentioned that we did have
[9] problems with keeping the flame lit for a period of
[10] time.
[11] Q: When you were identifying the flow, you
[12] pointed to the caramelizer and you said the product
[13] is dried. Isn't it also browned in the
[14] caramelizer?
[15] A: In the caramelizer, the caramelizer tank
[16] itself is just a fluid filled tank containing a
[17] caramel solution, and the product goes down
[18] underneath the surface of the fluid.
[19] Q: Oh, I'm sorry.
[20] A: And then out.
[21] Q: That's just to apply the product. You
[22] could even have an atomizer there, correct?
[23] A: Yes.
[24] Q: I'm talking about this dryer that's here

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[1] shown to be — well, obviously — is that a ten
[2] foot, I can't tell? That's scale, that's the
[3] dryer, I'm sorry. You mentioned that in that,
[4] that's a second oven in that process flow.
[5] A: Yes.
[6] Q: You mentioned it dries a product. Isn't
[7] it in there that the product is browned?
[8] A: Actually with a caramel process, the
[9] caramel is a dye, and so you simply dry the dye
[10] onto the surface.
[11] Q: It's more of a stain?
[12] A: Yes.
[13] Q: Caramel is a stain?
[14] A: Yes. And so the second oven was placed
[15] in there to set the stain on the surface.
[16] Q: It still imparts a color, correct?
[17] A: The caramel solution actually imparts
[18] the color, and the second oven was designed to
[19] be —
[20] Q: To dry the color?
[21] A: To dry the color off the surface.
[22] Q: And what's the color that's produced by
[23] the slice and serve?
[24] A: It's a light —

[1] just dries the caramel color that stains the
[2] product. But now we've got "browner" written on
[3] here, don't we?
[4] A: Yes.
[5] Q: Who wrote browner on there, do you know?
[6] A: I don't know.
[7] Q: Why would it have browner there, do you
[8] know, if it doesn't brown the product?
[9] A: The initial design was to be a drying
[10] system.
[11] Q: Okay.
[12] A: And I believe that that design was
[13] challenged later.
[14] Q: What do you mean challenged?
[15] A: Well, I know that when we were putting
[16] the Maillose through the system on a test basis,
[17] Maillose is a — it reacts differently, so if you
[18] apply heat, you actually go through a chemical
[19] reaction.
[20] Q: The Mallard reaction?
[21] A: The Mallard reaction, yes.
[22] Q: Okay. So that was added, these words
[23] "browner?"
[24] A: I don't know. I don't know.

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[1] Q: I mean what was the color back then, I'm
[2] sorry?
[3] A: On the slice and serve?
[4] Q: Yes.
[5] A: It's a light color. It's sort of a
[6] beige, a beige caramel color.
[7] Q: At that time, did you put this Hunter
[8] meter on it to determine the LAB values?
[9] A: I did not.
[10] Q: Did anyone else from Conagra?
[11] A: I don't know.
[12] Q: Any other products other than slice and
[13] serve in '89?
[14] A: I don't believe so.
[15] Q: Any other products produced from that
[16] system after 1989?
[17] A: I don't believe so. On a production
[18] basis, no.
[19] Q: When is the first time you saw this flow
[20] chart? Was it in the deposition of Prem Singh?
[21] A: Actually, no, I saw the flow chart a
[22] number of years ago.
[23] Q: Were the words "browner" written on it?
[24] You mentioned that this doesn't brown product. It

[1] Q: Sure. But at the time of the original
[2] flow process, it was simply a dryer, is that
[3] correct?
[4] A: To the best of my knowledge.
[5] Q: In the caramelizer with regards to the
[6] Enersyst system, did you also have too much slack
[7] in the drive belt?
[8] A: That's possible.
[9] Q: How about the handles on the cover got
[10] too hot on the caramelizer, is that possible as
[11] well?
[12] A: Yes, it is.
[13] Q: For how long did you have problems with
[14] the Enersyst system, how many months?
[15] A: I believe that we started the
[16] installation in the summer of 1989, and it could
[17] have been fall or winter before we actually had it
[18] running reliably on a consistent basis.
[19] Q: In fact, didn't you have to pay more
[20] money to put additional parts into the system in
[21] order to get it operating properly?
[22] A: That's possible.
[23] Q: Up to \$140,000 of additional parts and
[24] equipment from Enersyst you had to buy?

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[1] A: I don't know. That's possible.
[2] Q: Who is T.E. Howe, H-o-w-e?
[3] A: That was Tom Howe.
[4] Q: Was he the plant manager?
[5] A: No.
[6] Q: What was his title?
[7] A: I believe Tom Howe at that time was vice
[8] president or executive vice president in charge of
[9] operations.
[10] Q: Who is C.M. Abate, A-b-a-t-e?
[11] A: C.M. Abbott.
[12] Q: Okay.
[13] A: Was Bud Abbott, and I believe at that
[14] time he was a vice president in charge of some
[15] operations function.
[16] Q: Within a year didn't you get rid of the
[17] Enersyst system?
[18] A: No.
[19] Q: How long did you keep the Enersyst
[20] system?
[21] A: The Enersyst system was operating until
[22] 1999 or 2000.
[23] Q: The same Enersyst system you purchased
[24] in 1989?

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[1] A: Yes.
[2] Q: How much did you pay for the Enersyst
[3] system?
[4] A: I don't recall that.
[5] Q: Do you recall how many cost overruns you
[6] had on the system before you were able to get it to
[7] produce product consistent with your requirements?
[8] A: I don't recall.
[9] Q: Since 1999 or before 1999, what other
[10] product did you produce, anything other than slice
[11] and serve?
[12] A: On a production basis, I believe slice
[13] and serve was the only product.
[14] Q: How big is the product that would go
[15] through that oven? You mentioned whole muscle meat
[16] products. Were there two or three breasts compiled
[17] together, formed together?
[18] A: The individual product size was about
[19] three and a half to four pounds, and they were
[20] about seven — six to eight inches long, three to
[21] four inches high, three to four inches wide.
[22] Q: Did you produce the slice and serve
[23] product at any other plant in 1989?
[24] A: No, not that I know of.

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[1] Q: What other problems did you have with
[2] the Enersyst system from the date of installing it
[3] in the facility to 1999, do you recall?
[4] A: I don't recall.
[5] Q: Did you withhold payments from Enersyst
[6] for that system?
[7] A: I believe that we did withhold payments
[8] for a period of time as we were installing it.
[9] Q: For how long?
[10] A: I couldn't tell you that.
[11] Q: Until what, you got it working properly?
[12] A: Probably.
[13] Q: Would you agree it's pretty common with
[14] the industry that you withhold payments on the back
[15] end from vendors to make sure that everything is up
[16] and running pursuant to your specifications?
[17] A: Yes.
[18] Q: How much money did you withhold, over
[19] \$100,000 from that system?
[20] A: I couldn't tell you that.
[21] Q: The documents will reflect the payments
[22] withheld?
[23] A: Yes.
[24] Q: Would those payments not have been made

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[1] until the system was actually operating consistent
[2] to the production you needed?
[3] A: That's normally what we do.
[4] Q: All right. There is nothing wrong with
[5] that, is there?
[6] A: I don't think so.
[7] Q: I mean you liked the system, the
[8] Enersyst system, right?
[9] A: Yes.
[10] Q: Still operated until 1999?
[11] A: Yes.
[12] Q: Pretty common to have kinks and things
[13] to work out a system so that they operate as you
[14] require, correct?
[15] A: If it's a system that is a system that
[16] we design, a process that we design, and we don't
[17] have a background of experience, and it's a new
[18] application for those components that we buy from
[19] vendors, sometimes that happens.
[20] Q: Okay. What system replaced the Enersyst
[21] system in 1999?
[22] A: We actually moved the product from that
[23] plant to another plant.
[24] Q: Where did you move it to, the product?

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[1] A: We moved it to Jonesboro.
[2] Q: Did you buy a new oven for Jonesboro to
[3] produce the slice and serve?
[4] A: We actually changed the process.
[5] Q: Is that the '027 process?
[6] A: No.
[7] Q: It's a different process?
[8] A: Yes.
[9] Q: Is that using the higher heat?
[10] A: No.
[11] Q: Okay.
[12] A: In fact, today we might be, I don't
[13] know. But at the time that we moved it from Wells
[14] to Jonesboro, we were not.
[15] Q: In 1999 when you moved production of the
[16] slice and serve to the Jonesboro plant, did you
[17] keep the Enersyst ovens at the Wells plant?
[18] A: I don't know what happened to the
[19] Enersyst ovens. I don't know if they're still
[20] there or not.
[21] Q: What product do you produce at the Wells
[22] plant today — or, excuse me, did you produce when
[23] you moved the slice and serve in '99?
[24] A: Primarily roast beef.

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[1] Q: Anything else?
[2] A: We may have been producing some ham
[3] product there as well.
[4] Q: In '99?
[5] A: Yes.
[6] Q: What other product did you produce at
[7] the Wells plant from '89 to '99, the roast beef and
[8] the ham?
[9] A: Yes.
[10] Q: Anything else?
[11] A: There was a two pound roast.
[12] Q: Okay. I may not mark it yet, but
[13] they're Bates stamp numbers CRPF 00476 to 00477.
[14] Are these Mr. Wang's notes from the tests?
[15] A: These are Mr. Wang's notes from tests
[16] but they're not tests associated with Unitherm.
[17] Q: How do you know?
[18] A: Well, let's see, we're dealing with
[19] Healthy Choice smoked sausage, so I would think
[20] that that would be in a stationary house because
[21] that's the procedure that we use for Healthy Choice
[22] smoked sausage. And then the second page deals
[23] with a pre-cooked whole turkey product that was
[24] dipped in liquid smoke, and we have a dry bulb and

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[1] wet bulb reading, and typically we wouldn't take
[2] dry bulb and wet bulb readings on a Unitherm oven.
[3] Q: Why?
[4] A: I think the wet bulb reading at the
[5] temperatures that the Unitherm oven is designed to
[6] run wouldn't mean a lot for us.
[7] Q: Okay. I'm going to hand you now — I
[8] will take that back — Bates stamp numbers CRPF
[9] 00643 to CRPF 00645.
[10] MR. SCHROEDER: Excuse me, why don't we mark
[11] the one that the witness has already talked about
[12] as an Exhibit since he's given some testimony about
[13] it?
[14] MR. CASTRO: Well, I've got highlights on it.
[15] I mean we can. We can make copies of it.
[16] MR. SCHROEDER: That's fine. I would just
[17] like to have a complete record. I can go and mark
[18] it on cross, but it would be easier to put it in
[19] here.
[20] MR. CASTRO: What we'll do is we'll mark it as
[21] 4 for now. We will mark that as 5.
[22] BY MR. CASTRO:
[23] Q: You don't know where these tests are
[24] run, do you, on 4?

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[1] A: It doesn't say, but I would expect that
[2] they were run in our pilot plant.
[3] Q: What about these we'll mark as 5?
[4] A: Okay.
[5] Q: Are those the tests you were testifying
[6] about earlier that Mr. Wang conducted at the
[7] Unitherm facility?
[8] A: No.
[9] Q: How do you know?
[10] A: These are whole bird tests, and again we
[11] have dry bulb, wet bulb readings, and it just looks
[12] like that to me.
[13] Q: Okay.
[14] A: Looks like it was done in our pilot
[15] plant.
[16] Q: Do you know whether the tests done by
[17] Mr. Wang were before or after the tests run by
[18] Mr. Hussain at the Unitherm facility?
[19] A: I don't know.
[20] Q: In fact, why don't we, for the sake of
[21] the record, make it simpler. Let's mark all of
[22] these as 4, these hand notes.
[23] One more set. I will hand you some
[24] handwritten notes that appear to be some of

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[1] Mr. Wang that are going to be part of Exhibit 4.
[2] What about these, are these the test results?
[3] A: I don't know, and the reason I don't
[4] know is we have a Lincoln oven in the pilot plant
[5] that will also run at those temperatures, and so
[6] it's possible that it was done there. It's also
[7] possible it was done at Unitherm. I don't know.
[8] Q: And this part of Exhibit 4 is Bates
[9] stamped CRPF 04865 to CRPF 04870, correct?
[10] A: Correct.
[11] Q: Thank you. How much product was run
[12] through the Enersyst system in 1989. How many
[13] pounds per day?
[14] A: In 1989?
[15] Q: Yes.
[16] A: I don't know.
[17] Q: Who would know that?
[18] A: It's possible that Prem would know that.
[19] It's possible that the plant manager at the time
[20] would know that.
[21] Q: Who was that?
[22] A: I believe the person responsible for
[23] that plant was Terri Mace.
[24] Q: Is Terri Mace a he or she?

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[1] A: It's a he.
[2] Q: Does he still work for Conagra?
[3] A: Yes.
[4] Q: Where?
[5] A: He is the complex manager for Carthage.
[6] Q: Carthage is located where?
[7] A: Missouri.
[8] Q: Anyone else here in Illinois who could
[9] give us information regarding how many pounds of
[10] product were produced per day with the Enersyst
[11] system?
[12] A: From 1989?
[13] Q: Do you know whether it even changed
[14] between '89 and '99 when you quit using the system?
[15] A: I don't know.
[16] MR. CASTRO: Bob, are you going to produce
[17] somebody who will be able to tell us how many
[18] pounds of product were produced per day either in
[19] 1989 or '89 out of that Enersyst system under the
[20] category 11, all information relating to the use of
[21] the Wells Enersyst system from '85 to present? I
[22] thought that he would have that information.
[23] MR. SCHROEDER: Well, which category are we
[24] talking about here?

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[1] MR. CASTRO: Category 11.
[2] MR. SCHROEDER: All right. Well, it says the
[3] use. Now, if you want to know the amount produced,
[4] we'll see what we can do. I didn't interpret this
[5] request as calling for that. I frankly don't see
[6] its relevance to this. You're asking about the
[7] production of a different product prior to the time
[8] that anyone contends that the invention was made.
[9] What is the relevance of that?
[10] MR. CASTRO: Oh, from '85. I am asking now
[11] '89. The Enersyst system was installed in '89.
[12] MR. SCHROEDER: Yes.
[13] MR. CASTRO: That's when Prem Singh said he
[14] invented the process that's set out in the '027
[15] Patent.
[16] MR. SCHROEDER: Right, but no one says that
[17] that system, apart from this one test, was used to
[18] produce anything in accordance with the method of
[19] the invention, so what's the relevance here?
[20] MR. CASTRO: Well, that's what Mr. Salm says.
[21] That's his testimony.
[22] MR. SCHROEDER: What?
[23] MR. CASTRO: We want to know how many pounds
[24] per day was produced out of that system. We think

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[1] it's relevant or certainly calculated to lead to
[2] discovery of admissible evidence. That's the
[3] standard.
[4] MR. SCHROEDER: What's the relevance of the
[5] use of the Wells plant using a different system to
[6] produce a different product?
[7] MR. CASTRO: Well, I don't think I have to
[8] explain to you the relevance.
[9] MR. SCHROEDER: Sure, you do.
[10] MR. CASTRO: What I have to do is I have to
[11] identify these categories, and you didn't object to
[12] this category, and we certainly believe that all
[13] information relating to the use of the Wells system
[14] would certainly, certainly include how many pounds
[15] of product were produced per day out of that
[16] system.
[17] MR. SCHROEDER: Well, I interpret this as
[18] meaning what was the system used for, what was
[19] produced there. The witness has told you that. I
[20] don't see the relevance here of the amount of
[21] production of that system for the production of
[22] other products.
[23] MR. CASTRO: So you're not going to produce
[24] someone?

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[1] **MR. SCHROEDER:** I'll take it under advisement.
[2] I don't think we need to produce another witness.
[3] **MR. CASTRO:** If he can get the information at
[4] lunch and testify under oath to that information,
[5] that's fine with me. I don't need ten witnesses.
[6] I just want — I think that's a very simple piece
[7] of information to obtain.
[8] **MR. SCHROEDER:** Well, I'll consider it. But
[9] at the moment, you are telling me that you won't
[10] explain the relevance, you just want the
[11] information.
[12] **MR. CASTRO:** I think it goes to the production
[13] levels of the product, what kind of product was
[14] produced. You had product produced out of there
[15] that, according to the testimony of Conagra
[16] witnesses, caramel was applied. They contend that
[17] only test product was used for Maillose, and we
[18] want to know what the production numbers are and
[19] whether those numbers changed.
[20] **MR. SCHROEDER:** You're asking for the
[21] production numbers for all product over a period of
[22] 15 years.
[23] **MR. CASTRO:** No, just per day on average even.
[24] **MR. SCHROEDER:** Oh, that's different.

[1] **A:** No.
[2] **Q:** Okay.
[3] **MR. CASTRO:** So that would be the only
[4] information.
[5] **MR. SCHROEDER:** All right. We'll look into
[6] that.
[7] **THE WITNESS:** If it's all right with you, I am
[8] going to take a quick break.
[9] **MR. CASTRO:** Okay.
[10] (WHEREUPON, a short break was
[11] taken.)
[12] **BY MR. CASTRO:**
[13] **Q:** That Lincoln oven, what's the end feed
[14] aperture for that oven, do you know?
[15] **A:** It's about six inches.
[16] **Q:** So is that used primarily to cook
[17] pizzas?
[18] **A:** It's designed as a pizza oven.
[19] **Q:** Now, with regards to the Enersyst
[20] system, you didn't ultimately pay them all the
[21] money under the contract, did you?
[22] **A:** I don't know specifically, but I believe
[23] we did.
[24] **Q:** But the records will bear out whether

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[1] **MR. CASTRO:** I want to know in '89 what the
[2] production numbers were for the slice and serve
[3] pound per day.
[4] **MR. SCHROEDER:** All right. We will try to get
[5] that if that's what you want.
[6] **MR. CASTRO:** And then when the system left in
[7] '99 or they moved it, just prior to moving the
[8] system, what the poundage of production per day
[9] was.
[10] **MR. SCHROEDER:** And you are asking for that
[11] using the caramel system?
[12] **MR. CASTRO:** Any system. You used caramel.
[13] You used Maillose.
[14] **MR. SCHROEDER:** Well, obviously the production
[15] rate is dependent upon what's being used. But if
[16] you want to know what the production rate is or was
[17] for using caramel, we will try to find that out for
[18] you.
[19] **BY MR. CASTRO:**
[20] **Q:** Well, they testified — and I'll ask Mr.
[21] Salm. Was there any other product produced
[22] commercially other than through the caramel?
[23] **A:** No.
[24] **Q:** With the Enersyst system?

[1] that was true or not?
[2] **A:** Sure.
[3] **Q:** Now, do you retain the HACCP records for
[4] products produced from that Wells facility?
[5] **A:** The HACCP records for the Wells facility
[6] are at the Wells plant.
[7] **Q:** And tell me what those HACCP records
[8] will reflect?
[9] **A:** HACCP stands for hazard analysis and
[10] critical control point, and essentially what you do
[11] is you define a critical control point and then
[12] make sure that critical point is met. And so for
[13] products run through a facility, typically for our
[14] facilities, we'll have a single critical control
[15] point, and that single critical control point for
[16] pre-cooked products typically would be the
[17] temperature, internal temperature that those
[18] pre-cooked products reach.
[19] **Q:** Do those records reflect the type of
[20] product that is run through that oven and the
[21] amount of that product, the quantity?
[22] **A:** They may not have the quantity on them.
[23] **Q:** But they'll have the type of product?
[24] **A:** Yes.

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- [1] Q: Do you have to maintain those records
[2] for product you test and — that you just test? Do
[3] you have to retain records or maintain records,
[4] HACCP records, for products you simply test at the
[5] facility?
[6] A: No.
[7] Q: So you only keep HACCP records for a
[8] product that is actually produced commercially and
[9] sold to the public?
[10] A: Yes.
[11] Q: So that if you had HACCP records with
[12] respect to a certain product, that means that that
[13] product was actually produced commercially and sold
[14] to the public, correct?
[15] A: Not necessarily. We might have HACCP
[16] records for products that are tested for our
[17] records, but it's not necessary for products that
[18] are tested.
[19] Q: Who requires that you keep HACCP
[20] records?
[21] A: The USDA.
[22] Q: And for how long do you retain those
[23] records?
[24] A: Typically those records are retained

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- [1] through a product shelf life as a requirement. We
[2] might keep them longer.
[3] Q: You mean records are only required to be
[4] maintained for as long as the product would be on
[5] the shelf?
[6] A: As long as the product would be
[7] reasonably expected to be in the consumers' hands.
[8] Q: How long was this slice and serve
[9] product expected to be in a consumers' hand in
[10] 1989?
[11] A: Are you asking what the shelf life was
[12] on that product?
[13] Q: Right.
[14] A: The shelf life on that product in 1989
[15] was, I believe, 60 or 70 days.
[16] Q: So you wouldn't continue to have the
[17] HACCP records for the product produced even in '99,
[18] would you?
[19] A: It's possible that we do. It's not a
[20] government requirement.
[21] Q: The requirement simply is for as long as
[22] the shelf life of the product?
[23] A: I believe that's right.
[24] Q: Okay. Explain to me, sir, if you would

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- [1] the testing of Maillose at the Wells facility.
[2] What was the procedure used? Were you responsible
[3] for that? Those were a couple of questions.
[4] Were you responsible for the testing of
[5] the Maillose as you've testified at the Wells
[6] plant?
[7] A: I was not.
[8] Q: Was that Syed Hussain who was
[9] responsible for that testing?
[10] A: Syed Hussain was the research scientist
[11] who carried out the testing.
[12] Q: He was keenly aware, was he not, of the
[13] particular tests that were done with that product,
[14] was he not?
[15] A: Yes.
[16] Q: Familiar with when the Maillose was
[17] used, when it was not used, correct?
[18] A: I believe so.
[19] Q: The '027 Patent which was marked
[20] yesterday as Exhibit 1 of Mr. Hussain's deposition,
[21] you've reviewed that before, correct?
[22] A: Yes.
[23] Q: What other parties or third persons have
[24] you shared that information with prior to the

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- [1] filing of that patent? When I say you, anyone from
[2] Conagra.
[3] A: We shared information with Red Arrow, we
[4] shared information with Convenience Food Systems,
[5] with Stein, with Unitherm, and could be that we
[6] shared information with Heat & Control as well.
[7] Q: When did you first share information
[8] regarding the process as described in the '027
[9] Patent with Red Arrow?
[10] A: I believe that there were portions of
[11] that process that were shared with Red Arrow in
[12] 1990.
[13] Q: What portions?
[14] A: There are components in this patent that
[15] were built up over time that included temperatures
[16] and times, pre-wash conditions, liquid smoke
[17] application that may have been shared with them as
[18] early as 1990.
[19] Q: You said temperature and time, liquid
[20] smoke application, and, I'm sorry, I was — what
[21] else?
[22] A: That may have been shared with them as
[23] early as 1990.
[24] Q: And those were items or components, as

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[1] you put it, of the '027 Patent which were built up
[2] over time?
[3] A: Yes.
[4] Q: When you shared that information with
[5] Red Arrow, did you do it under any type of
[6] confidentiality agreement?
[7] A: We had ongoing confidentiality
[8] agreements with Red Arrow.
[9] Q: When did you first share that
[10] information — well, what other information did you
[11] share with Red Arrow other than temperature, time,
[12] liquid smoke application after 1990?
[13] Let me go back first. This information,
[14] who shared this information with Red Arrow? Was it
[15] you or someone else?
[16] A: There were a couple of people that were
[17] involved with Red Arrow. It was Prem Singh, and I
[18] know that Syed Hussain talked with Red Arrow
[19] extensively and worked with them on coloring
[20] applications.
[21] Q: Well, do you know as you sit here today
[22] whether, in fact, Prem Singh shared temperature and
[23] time and liquid smoke application as outlined in
[24] the '027 Patent with Red Arrow in 1990?

[1] A: Yes.
[2] Q: Any other way you define that color
[3] objective?
[4] A: What do you mean?
[5] Q: Well, I mean so you just told Red Arrow
[6] the color objective that we are attempting to
[7] achieve, I assume, with this new process that we
[8] are developing is Golden Brown color, is that fair
[9] to say?
[10] A: We told them that it was Golden Brown
[11] color. We showed them examples of Golden Brown,
[12] and we showed them pictures that would represent
[13] something close to Golden Brown.
[14] Q: These examples of Golden Brown, was this
[15] from product that was produced by Conagra or
[16] product that was produced using other company's
[17] ovens?
[18] A: It was product that was produced by
[19] Conagra.
[20] Q: Where?
[21] A: In our test kitchen.
[22] Q: Where?
[23] A: At Downers Grove.
[24] Q: Using what oven?

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[1] A: Based on everything that I know, I
[2] believe that he did.
[3] Q: Okay. Now, with respect to liquid smoke
[4] application, is it your testimony, I take it, that
[5] Prem Singh shared that he had more expertise with
[6] respect to liquid smoke application than Red Arrow
[7] in 1990?
[8] A: With respect to liquid smoke
[9] application?
[10] Q: Yes.
[11] A: I believe so.
[12] Q: Okay. And when is the next time Conagra
[13] shared information as set forth in the '027 Patent
[14] with Red Arrow, if you know?
[15] A: I know in 1997, we defined the color
[16] objective.
[17] Q: The color objective for what product?
[18] A: For the whole muscle turkey breast.
[19] Q: And when you say defined color
[20] objective, you mean the Golden Brown color which is
[21] set forth in the '027 Patent?
[22] A: Yes.
[23] Q: And that's how you define the color
[24] objective as being Golden Brown?

[1] A: I don't know if it was a General
[2] Electric oven. It's, I think, a typical household
[3] oven.
[4] Q: So it wasn't through an in-line process
[5] whereby it was with the residence time of, you
[6] know, 6 to 12 minutes?
[7] A: Correct.
[8] Q: Okay. It was just you were trying to
[9] simply achieve a color you wanted and trying to do
[10] it the best you could in the conventional oven you
[11] had, correct?
[12] A: That was the example that we showed.
[13] Q: Okay. In other words, it wasn't —
[14] okay. And the pictures, you mean pictures of
[15] product produced through that General Electric
[16] oven?
[17] A: Yes.
[18] Q: In other words, you cooked or browned
[19] the product and then took pictures of it?
[20] A: Yes.
[21] Q: And you showed it to them either by way
[22] of actually putting the whole muscle meat product
[23] in front of them or by pictures, correct?
[24] A: Both.

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[1] Q: Both. And who did you share those
[2] pictures with and the examples?
[3] A: I believe it was Chad Anderson.
[4] Q: Anyone else?
[5] A: I don't think so.
[6] Q: How did you achieve that color objective
[7] on the General Electric product, and by that I mean
[8] did you put any liquid pyrolysis product on the
[9] turkey?
[10] A: In that particular example, we did not.
[11] Q: What about — so no caramel either?
[12] A: Correct.
[13] Q: You just were trying to get the color —
[14] this is probably a bad example, but it's kind of
[15] like — well, it is, it's not a good analogy. But
[16] it's kind of like when I see commercials and you
[17] have got what looks to be like a great product from
[18] Burger King, but, in fact, it's not a real product;
[19] they did it for T.V. to present a color and
[20] description that the public would like?
[21] I know this was real product you showed
[22] to Red Arrow, but indeed it was product not
[23] produced with the process as set forth in the
[24] patent, correct?

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[1] MR. SCHROEDER: Just a second. I'm going to
[2] object to that question as compound and confusing,
[3] but the witness can answer.
[4] MR. CASTRO: Does it confuse you?
[5] MR. SCHROEDER: If there is a question there,
[6] I can't find it.
[7] BY THE WITNESS:
[8] A: What's the question?
[9] BY MR. CASTRO:
[10] Q: This is a simple question now. The
[11] product that you showed to obtain the color
[12] objective was not product produced with the process
[13] as set forth in the '027 Patent, correct?
[14] A: Some of it was not.
[15] Q: Which part was?
[16] A: We also produced some product as we went
[17] through our testing then that met that color
[18] objective, testing of equipment.
[19] Q: Of third parties?
[20] A: Yes.
[21] Q: And which equipment was that?
[22] A: The Stein equipment, to some extent, it
[23] wasn't entirely. The Koppens equipment.
[24] Q: What else, Unitherm?

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[1] A: The Unitherm equipment, and I believe
[2] Heat & Control.
[3] Q: Now, you've listed four different ovens.
[4] So with the Unitherm equipment, you were able to
[5] achieve these Golden Brown color with their
[6] product?
[7] A: Initially.
[8] Q: What do you mean by initially?
[9] A: Some of the product that was produced,
[10] as we went through our equipment testing, faded
[11] over time, and some of it developed a green ring
[12] under the surface.
[13] Q: And were you involved in the testing of
[14] that Unitherm equipment?
[15] A: Yes.
[16] Q: Explain to me your personal involvement,
[17] and then we'll talk about it from a Conagra
[18] standpoint. Give me a chronology so that we'll
[19] save time as to when the equipment was brought in
[20] and your involvement from the beginning to when the
[21] equipment was shipped back out six months later.
[22] A: Okay.
[23] Q: I mean you did have the equipment six
[24] months, correct?

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[1] A: I wasn't involved in that testing.
[2] Q: Oh, which testing —
[3] A: The testing that I was referring to was
[4] the testing that was conducted in February of 1998.
[5] Q: Okay. You had nothing to do personally
[6] with the testing that was done on the Unitherm
[7] equipment from November of 1995 till April of 1996?
[8] A: Correct.
[9] Q: Okay. Who was involved with that
[10] testing?
[11] A: I believe that was Prem Singh.
[12] Q: Anyone else?
[13] A: I believe Prem was the person
[14] responsible for that testing. There were other
[15] people that likely viewed results from the testing.
[16] Q: Okay. Any other information shared with
[17] Red Arrow with regards to the claims set forth in
[18] the '027 Patent prior to the filing of the '027
[19] Patent?
[20] You have talked about early on in '90,
[21] the temperature and time, liquid smoke application,
[22] and then in 1997, you shared with them the color
[23] objective for the product. Anything else?
[24] A: We may have shared with them results

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[1] from the laser testing, and I don't know that
[2] that's true or not.
[3] Q: Laser testing, was this done —
[4] A: We used their product, so I would assume
[5] that it was true.
[6] Q: You used the Maillose?
[7] A: Yes.
[8] Q: And you used the liquid smoke?
[9] A: In that testing, I believe it was
[10] Maillose.
[11] Q: Whose equipment did you use for the
[12] laser testing? Was it PureLight?
[13] A: Yes.
[14] Q: Where did you get the idea to use laser
[15] testing to brown whole muscle meat product? Did
[16] that come from PureLight?
[17] A: No, that came from Prem.
[18] Q: Did it?
[19] A: Yes.
[20] Q: Same with running whole muscle meat
[21] product through a convection oven, was that Prem
[22] Singh's idea?
[23] A: Actually convection ovens have been used
[24] for a long time.

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[1] Q: I understand that. But I'm talking
[2] about obtaining the Golden Brown color for the
[3] whole muscle meat product as set out in the claims
[4] in the '027 Patent, is it your testimony here today
[5] that that was Prem's idea to use a convection oven?
[6] A: Yes.
[7] Q: And when did he come up with that idea,
[8] do you know?
[9] A: It was 1989, 1990-ish.
[10] Q: Okay. That's what he's told you,
[11] correct?
[12] A: Yes.
[13] Q: Any other information that Conagra
[14] shared with Red Arrow prior to the filing of the
[15] patent?
[16] A: No.
[17] Q: What about Unitherm, what information
[18] was shared with Unitherm — I'm sorry, go ahead,
[19] there was a question pending.
[20] A: We shared the color objective with
[21] Unitherm.
[22] Q: When was that —
[23] A: That was in —
[24] Q: — objective disclosed?

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[1] A: February of 1998.
[2] Q: Anything else?
[3] A: I'm not sure.
[4] Q: Well, I want you to be sure.
[5] A: Right.
[6] Q: If you need to look at the patent, then
[7] you go ahead and look at the patent, but I want you
[8] to be sure if there is any other information that
[9] you shared with Unitherm that's disclosed in the
[10] patent prior to the filing of the patent.
[11] A: Right. I don't know that we shared
[12] anything else.
[13] Q: Other than color objective?
[14] A: I know we shared color objective with
[15] them.
[16] Q: Right. And that was the Golden Brown?
[17] A: Right, because I was there when that
[18] happened.
[19] Q: Did you have one of these Hunter wands
[20] with you when you disclosed the color objective in
[21] February?
[22] A: Actually we showed them a picture.
[23] Q: Picture of a piece of product?
[24] A: Yes.

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[1] Q: Okay. Was this the picture from the
[2] General Electric oven product produced from the
[3] General Electric oven?
[4] A: Or other similar type oven.
[5] Q: And you're looking at the patent right
[6] now, so I don't want to interrupt you. I just want
[7] to make sure that there is nothing else that you
[8] disclosed to them.
[9] A: I believe that was it.
[10] Q: Who was present when you disclosed the
[11] color objective to Unitherm?
[12] A: I know that David Howard was present,
[13] and I know that Prem Singh was present, and I know
[14] that Chad Anderson was present.
[15] Q: And this was disclosed to Unitherm
[16] through David Howard in February of 1998 when you
[17] visited the Unitherm facility in Ponca City?
[18] A: Yes.
[19] Q: Was Jim Wade present?
[20] A: I don't recall that.
[21] Q: What about the Heat & Control, you're
[22] not sure whether you disclosed any of this
[23] information to them?
[24] A: I wasn't at the Heat & Control testing.

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[1] Q: When did the Heat & Control testing take
[2] place?
[3] A: It was early '98 when that was done.
[4] Q: Well, has anyone shared with you what
[5] information — has anyone from your company shared
[6] with you the information that was disclosed to Heat
[7] & Control?
[8] A: No.
[9] Q: In early 98, excuse me.
[10] A: No.
[11] Q: Who was at that testing?
[12] A: I believe that that was Prem Singh and
[13] it — I think that was it.
[14] Q: Was anyone from Red Arrow at that
[15] testing?
[16] A: Could have been Chad Anderson.
[17] Q: What type of —
[18] A: But I don't know that for sure.
[19] Q: What type of apparatus were you testing
[20] in early '98 at Heat & Control?
[21] A: It was a high temperature convection
[22] oven, circulating air oven.
[23] Q: What temperatures? What was the range
[24] of temperature?

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[1] A: I don't know that.
[2] Q: You don't even know whether it was at
[3] the range of temperatures which are called for in
[4] the '027 Patent, do you?
[5] A: I don't know that.
[6] Q: Okay. What about with respect to Stein,
[7] what information did you share with Stein relating
[8] to the '027 Patent prior to the filing of the
[9] patent?
[10] A: I know we shared the color objective.
[11] Q: Anything else?
[12] A: No.
[13] Q: When was that?
[14] A: That was in early 1998.
[15] Q: You didn't share with them anything
[16] else?
[17] A: Not that I recall.
[18] Q: You didn't share with them time or
[19] temperatures, correct?
[20] A: Yes, we did, and we operated within a
[21] certain time and temperature range.
[22] Q: Okay. What was the time and temperature
[23] range? That's what you disclosed to them? They
[24] hadn't already thought of that in order to brown

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[1] this whole muscle meat product, is that your
[2] testimony?
[3] MR. SCHROEDER: Objection, calls for
[4] speculation.
[5] BY MR. CASTRO:
[6] Q: I mean you said that you're the ones
[7] that shared with them?
[8] A: Sure.
[9] Q: The time and temperature, and I want to
[10] know if they already —
[11] MR. SCHROEDER: Just a second. I object as
[12] calling for speculation.
[13] MR. CASTRO: That's fine.
[14] MR. SCHROEDER: Go ahead.
[15] THE WITNESS: Okay.
[16] BY MR. CASTRO:
[17] Q: How about this question: You don't even
[18] know whether they already had time and temperature
[19] thought out before you approached them to test
[20] product in their oven, did you — do you?
[21] A: I know in my discussions with Don Burge,
[22] who was their pilot plant manager, that we
[23] discussed time and temperatures, and I believe that
[24] it was a back and forth discussion.

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[1] Q: It was a collaboration, correct?
[2] A: Yes. So I don't know if they already
[3] had suggestions or not.
[4] Q: Did you have a — did you enter into a
[5] confidentiality agreement — did you require
[6] Unitherm to sign a confidentiality agreement in
[7] February of '98 before you shared this color
[8] objective of the '027 Patent?
[9] A: I didn't require one, but after we
[10] showed up at the facility, David Howard had us sign
[11] one.
[12] Q: Right. Do you know why?
[13] A: I don't know exactly, although David
[14] showed us a number of pieces of equipment in his
[15] shop.
[16] Q: Okay.
[17] A: And I was expecting that he was
[18] protecting those unique pieces of equipment. For
[19] instance, he had a hot wire wrap automatic debagger
[20] that I hadn't seen before.
[21] Q: Did he have an infrared oven?
[22] A: Yes, he had an infrared oven.
[23] Q: You hadn't seen that before either, had
[24] you?

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[1] A: Yes.
[2] Q: Oh, you had?
[3] A: Yes, we were familiar with infrared
[4] ovens.
[5] Q: But not one like his, correct?
[6] A: Myself personally?
[7] Q: Yes.
[8] A: No.
[9] Q: Okay. What about Heat & Control, did
[10] you require Heat & Control to sign a
[11] confidentiality agreement before you shared your
[12] color objective with them even though you weren't
[13] there? Is there one in your file?
[14] A: I don't have one in my file.
[15] Q: Was there one signed?
[16] A: I don't know.
[17] Q: What about with Stein?
[18] A: I don't have one in my file for Stein
[19] either.
[20] Q: Was there one signed with Stein?
[21] A: I think with both Heat & Control and
[22] Stein, that we have Conagra-wide confidentiality
[23] agreements. I don't know that for a fact, but I
[24] believe that to be true.

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[1] Q: Okay. But at the time, you didn't know
[2] that for a fact, did you?
[3] A: Correct.
[4] Q: Anything else other than the color
[5] objective and the — well, you don't know whether
[6] you shared particular time and temperature
[7] information with Stein so much as it was just a
[8] back and forth discussion and collaboration,
[9] correct?
[10] A: Right.
[11] Q: What kind of oven does Stein have?
[12] A: Stein had an impingement oven.
[13] Q: How is an impingement different than a
[14] convection oven?
[15] A: An impingement oven has higher that is
[16] very forcibly directed through restrictive nozzles
[17] onto a point.
[18] Q: And the convection oven, is that a
[19] circulating air, a more general air flow?
[20] A: Convection oven would be a circulating
[21] oven.
[22] Q: What was your opinion of the product
[23] produced from the Heat & Control oven in early '98?
[24] Were you pleased with the product?

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[1] A: Yes.
[2] Q: Or displeased?
[3] A: Yes, we were pleased.
[4] Q: What about the product produced with the
[5] Stein oven, were you pleased with that product?
[6] A: Some of it, we were pleased with, and
[7] others, we were not.
[8] Q: Now, you said that you — how many tests
[9] did you run with the Unitherm oven in '98?
[10] A: One.
[11] Q: If I understand your testimony, you were
[12] pleased with some of it, and some of it, you were
[13] not pleased?
[14] A: Yes.
[15] Q: About the same for Heat & Control as you
[16] were for Unitherm as far as approval?
[17] A: I think we were generally pleased with
[18] the Heat & Control product.
[19] Q: More so than the Unitherm product?
[20] A: Yes.
[21] Q: Do you recall exactly what the date was
[22] that you tested the Heat & Control product in '98?
[23] A: No.
[24] Q: Was it prior to February or after

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[1] February?
[2] A: I couldn't tell you.
[3] Q: Documents that you produced would
[4] reflect that?
[5] A: I believe so.
[6] Q: Okay. What about the Convenience Foods
[7] oven, did you share any — excuse me, with
[8] Convenience Foods, what information did you share
[9] with them prior to — that's contained in the '027
[10] Patent prior to the filing of that patent?
[11] A: We shared the color objective and
[12] similarly to Stein and Unitherm and Koppens, there
[13] was a back and forth discussion about times and
[14] temperatures.
[15] Q: But that was not information that was
[16] simply unique to Conagra, correct?
[17] A: I believe that's right.
[18] Q: Okay. You understand that both — that
[19] all of these companies, Heat & Control, Stein,
[20] Convenience Foods, Unitherm, all were attempting to
[21] produce product that would please the consumer or
[22] please purchasers like you or others in order to
[23] obtain a certain color?
[24] MR. SCHROEDER: Objection, lacks foundation.

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[1] BY THE WITNESS:
[2] A: I wouldn't know that.
[3] BY MR. CASTRO:
[4] Q: Okay. Any other information you shared
[5] with Convenience Foods with respect to the '027
[6] Patent?
[7] A: I think that's it.
[8] Q: Did you have — did you require
[9] Convenience Foods to enter into a confidentiality
[10] agreement before you shared that information with
[11] them?
[12] A: No, and again I believe it was the same
[13] situation with Convenience Foods as it was with
[14] Stein and Heat & Control that we had a blanket
[15] confidentiality agreement.
[16] Q: Now, what was occurring in 1997 at
[17] Conagra to cause Conagra to begin developing the
[18] process that's contained in the '027 Patent?
[19] MR. SCHROEDER: Objection, assumes facts not
[20] in evidence.
[21] BY MR. CASTRO:
[22] Q: Well, at what point in time did Conagra
[23] begin developing the process that's contained in
[24] the '027 Patent?

[1] A: Sure, sure.
[2] Q: What other components then other than
[3] the two ovens?
[4] A: I know critical elements to obtain the
[5] Golden Brown color would include things like
[6] washing off the purge and then —
[7] Q: So a purge removal?
[8] A: A purge removal, and then pre-drying the
[9] surface.
[10] Q: You pre-dried the surface through the
[11] first oven, correct?
[12] A: Yes.
[13] Q: So that takes care of the one oven that
[14] deals with the component that allows you to get the
[15] color objective, right?
[16] A: That's one of the components.
[17] Q: Right. And then you have the purge
[18] removal which is — I guess that would be the work
[19] table here on your Exhibit 3? It says open
[20] package, remove gelatin.
[21] A: That's part of it.
[22] Q: What's the other part?
[23] A: There is a gelatin cleaner.
[24] Q: Okay, very good.

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[1] A: There were portions of that process that
[2] were developed as early as '89. Is that an answer
[3] to your question, or do you want —
[4] Q: And then when was the color objective
[5] developed by Conagra?
[6] A: The color objective was really defined
[7] in '97.
[8] Q: When in '97?
[9] A: It was late '97, October maybe.
[10] Q: Other than the color objective which was
[11] developed in October or so of 1997, what areas of
[12] the patent were developed in 1989?
[13] A: There are components in the patent that
[14] allow you to get to the color objective that were
[15] developed in 1989.
[16] Q: Would those components include the two
[17] ovens that you acquired from Enersyst?
[18] A: That was part of it.
[19] Q: What other components? Would there be
[20] an apparatus in which you applied liquid smoke or
[21] Maillose or some other kind of coloring agent?
[22] A: I think those apparatus were likely well
[23] known for applying liquid smoke onto the surface.
[24] Q: They were already known before?

[1] A: That was in-line.
[2] Q: All right. To get the purge off?
[3] A: Yes.
[4] Q: All right. And that can be done by
[5] another method, can it not?
[6] A: I would expect it can.
[7] Q: You can do it by high heat?
[8] A: I would expect that you could if it was
[9] in for long enough.
[10] Q: Okay.
[11] A: And melt the purge off.
[12] Q: What else? What other components were
[13] there in place in '89?
[14] A: The second oven.
[15] Q: Okay.
[16] A: Was in place.
[17] Q: Very well. Now, in '89, that oven was
[18] in place not to impart color but to simply dry the
[19] stain from the caramel, correct?
[20] A: Correct.
[21] Q: All right. When did you begin using the
[22] second oven in order to impart color vis-a-vis
[23] setting the stain?
[24] A: Right. Actually it wouldn't be setting

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[1] the stain. The second oven was used for setting
[2] the stain in 1989.
[3] Q: Right, correct.
[4] A: Are you talking about —
[5] Q: When did you begin using the oven in
[6] order to heat the product as to create this Mallard
[7] reaction?
[8] A: Mallard reaction.
[9] Q: Mallard. See, I couldn't even get it
[10] right twice, the Mallard reaction. Would that be
[11] when you began using the Maillose?
[12] A: No, I believe that there were tests that
[13] were conducted in '89 or '90 with liquid smoke, and
[14] there are components of liquid smoke that would
[15] also go through a chemical reaction when you apply
[16] heat.
[17] Q: Anything else in '89 or '90?
[18] A: I think that was it.
[19] Q: Anything else from 1990 to 1997 when you
[20] established the color objective which was developed
[21] and is set forth in one or more of the claims in
[22] the '027 Patent?
[23] A: We hadn't done work with laser before
[24] 1997, I believe, for this specific color objective.

[1] documents, Bob, with regards to Synrad. Could
[2] you —
[3] MR. SCHROEDER: We will look into that. I
[4] can't tell you offhand whether there are any such
[5] documents and whether they have been produced.
[6] MR. CASTRO: Right. And to the extent they
[7] have not been produced, and we will look at our
[8] records, too, we would request now that those
[9] records be produced dealing along the same
[10] production request that we have had pending for
[11] months. Can we have that agreement?
[12] MR. SCHROEDER: You will have the agreement
[13] that we will look into it to see if there are any
[14] such documents that haven't been produced.
[15] MR. CASTRO: If they haven't been produced,
[16] will they be produced?
[17] MR. SCHROEDER: Certainly, if they're within
[18] your request and assuming that they're not
[19] privileged.
[20] BY MR. CASTRO:
[21] Q: To make sure we're correct, if those
[22] were done for testing of product, that would be
[23] produced under one or more of the claims under the
[24] '027 Patent, correct?

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[1] Q: Anything else?
[2] A: Excuse me, Counsel, can I correct an
[3] earlier statement.
[4] Q: Sure.
[5] A: In the patent, we list Synrad Laser
[6] Company.
[7] Q: How is that spelled?
[8] A: S-y-n-r-a-d.
[9] Q: Okay. Is that someone you did testing
[10] with?
[11] A: I believe so.
[12] Q: Other than Convenience, Stein, Unitherm
[13] and Heat & Control. Did you ever do testing with
[14] PureLightout of California?
[15] A: Yes, I believe we talked about that
[16] earlier.
[17] Q: We didn't, but we will.
[18] A: Okay.
[19] Q: When did you do testing with Synrad?
[20] A: It was either late 1997 or early 1998.
[21] Q: Were there documents generated with
[22] testing on Synrad?
[23] A: I believe so.
[24] MR. CASTRO: I don't believe I've seen any

[1] A: Yes.
[2] Q: All right. PureLight, were they another
[3] company that you did testing with with regards to
[4] product that was going to be produced under one or
[5] more of the claims contained in the '027 Patent?
[6] A: Yes.
[7] Q: Synrad, did you sign a confidentiality
[8] agreement with Synrad or require them to? Did you
[9] require Synrad to sign a confidentiality agreement?
[10] A: I don't know. I believe so. I don't
[11] know.
[12] Q: Who was involved in that testing?
[13] A: That was Prem Singh.
[14] Q: Anyone else from Conagra?
[15] A: No.
[16] Q: What about with PureLight, was there a
[17] confidentiality agreement that you required
[18] PureLight to sign?
[19] A: I believe so.
[20] Q: Who was involved in that testing?
[21] A: Prem Singh.
[22] Q: Was Mr. Weatherspoon?
[23] A: J.B. Weatherspoon was not part of that
[24] testing.

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[1] Q: After 1990, what other components, if
[2] any, were developed by Conagra other than the color
[3] objective that are contained in the '027 Patent?

[4] A: I mentioned the laser work.

[5] Q: Anything else other than the laser and
[6] the color objective?

[7] A: I believe that's right.

[8] Q: Nothing else?

[9] A: I believe that's right.

[10] Q: Make sure we cover the waterfront. Any
[11] other processes or practice methods developed from
[12] 1990 to the date of the filing of the patent
[13] developed by Conagra which are contained in the
[14] '027 Patent?

[15] A: Can you ask the question again?

[16] Q: Sure. We talked about components. We
[17] used that term.

[18] A: Sure.

[19] Q: But were there any other processes or
[20] practice methods developed by Conagra after 1990 up
[21] to the date of the filing of the patent which may
[22] be contained in the claims in the '027 Patent?

[23] MR. SCHROEDER: Want to take a look at the
[24] patent, the claims?

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[1] A: Yes.

[2] Q: In '97. And then, of course, the use of
[3] laser. Anything else?

[4] MR. SCHROEDER: Now, when you say anything
[5] else, you mean anything else that's claimed in the
[6] patent, is that your question?

[7] MR. CASTRO: That's correct.

[8] MR. SCHROEDER: Well, there are 36 claims. I
[9] think if you're going to ask him to respond with
[10] respect to all 36 claims in a single question, I
[11] guess I won't object on grounds of the question
[12] being compound as long as the witness is given an
[13] opportunity to review all of those 36 claims before
[14] he answers the question.

[15] MR. CASTRO: Do you want to break for lunch
[16] now, and he can review those, and then we'll come
[17] back and we will finish that question up?

[18] MR. SCHROEDER: That's all right with me.

[19] MR. CASTRO: I think it will be faster to do
[20] it that way.

[21] MR. SCHROEDER: Sure. I just don't want him
[22] to answer without looking at the claims.

[23] MR. CASTRO: I understand, and I don't want
[24] him to.

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[1] BY THE WITNESS:

[2] A: Well, we've talked about a couple of
[3] things.

[4] BY MR. CASTRO:

[5] Q: We've talked about — and I will try to
[6] clear it. We have talked about components — well,
[7] go ahead, I'm sorry.

[8] A: If you would clarify.

[9] Q: We have talked about the components. We
[10] have talked about the two ovens that allow you to
[11] obtain the color objective. We talked about this
[12] apparatus which you didn't develop because it was
[13] already known, an atomizer or a dip tank, correct?

[14] A: Yes.

[15] Q: To apply either a liquid smoke or a
[16] Maillose or even in 1989 a caramel, correct?

[17] A: Yes.

[18] Q: And we talked about purge removal that
[19] you said Conagra developed which was done both by
[20] removing the purge and then drying the whole muscle
[21] meat product, correct?

[22] A: Yes.

[23] Q: And then we talked about the color
[24] objective?

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[1] THE WITNESS: Sure.

[2] (WHEREUPON, a short break was
[3] taken.)

[4] BY MR. CASTRO:

[5] Q: When we broke for lunch, Mr. Salm, we
[6] talked about — before we broke for lunch, I asked
[7] you questions regarding if there was anything
[8] else — any other processes or methods you
[9] disclosed to third parties after 1990 and before
[10] the filing of the patent.

[11] You were going to spend some lunch time
[12] going through if there was anything else. Did you
[13] find anything else?

[14] MR. SCHROEDER: I don't think that's the
[15] question you left the witness with.

[16] MR. CASTRO: Well, she didn't have the
[17] question.

[18] MR. SCHROEDER: The question was, in
[19] substance, what is claimed in the '027 Patent that
[20] had been developed prior to 1997.

[21] BY MR. CASTRO:

[22] Q: Other than what you've testified to
[23] earlier, is there anything else in that patent?

[24] A: I'm confused because the answer — ask a

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[1] specific question and then let me answer it so I'm
[2] not confused, okay. Is that all right?
[3] Q: Sure. I first asked you what other
[4] components or apparatus did Conagra develop after
[5] 1990 that are used to produce product as claimed in
[6] the '027 Patent.
[7] A: Okay.
[8] Q: Okay. Did you think of anything else?
[9] A: As I went through the claims —
[10] Q: Yes.
[11] A: In point No. 2, we did fish.
[12] Q: Anything else?
[13] A: In point No. 3, we did pre-cooked
[14] chicken breast. And in point No. 5, we knew some
[15] of that. We essentially refined it.
[16] Q: When did you refine it?
[17] A: There was a period of time in '97. Late
[18] '97, early '98 that they were refined.
[19] Q: Who did you refine that with, Red Arrow?
[20] A: Prem Singh refined that information.
[21] Q: Do you know whether he did that in
[22] collaboration with Red Arrow?
[23] A: No, he did not.
[24] Q: How do you know that?

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[1] A: I know that he took the data.
[2] Q: Data from what?
[3] A: His tests.
[4] Q: Tests performed on what oven?
[5] A: Well, it was probably — I don't know
[6] for sure. I don't know for sure.
[7] Q: Could have been a Unitherm oven?
[8] A: No.
[9] Q: Why not?
[10] A: Because — I was at that test and I
[11] don't recall that data.
[12] Q: The data in No. 5?
[13] A: Being refined at that time. It's no. 6.
[14] Q: Oh, No. 6.
[15] A: I don't recall him taking that data at
[16] the Unitherm test in February of '98.
[17] Okay. In No. 8, we did work on masking
[18] agents and flavoring agents, flavoring enhancing
[19] agents.
[20] Q: Like chicken broth?
[21] A: That actually gets mentioned later.
[22] Q: So that's not included in claim 8?
[23] A: It could be, but it's also mentioned
[24] later.

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[1] Q: Okay. It could include chicken broth,
[2] correct?
[3] A: Could.
[4] Q: All right. Go ahead.
[5] A: And No. 9 when we mention turkey flavor
[6] or turkey broth or a mixture of the two.
[7] Q: All right. When did you develop that?
[8] A: That was, I believe, in '97 and '98,
[9] early '98. And in point No. 10, it mentions the
[10] laser and we recognize that.
[11] Q: Okay.
[12] A: In point No. 14, refining the
[13] temperatures; point No. 13, refining the
[14] temperatures; point No. 14, refining the
[15] temperatures to get the color objective.
[16] Q: That would be, wouldn't it, sir, time
[17] and temperature that you did in collaboration with
[18] people like Unitherm and others?
[19] A: Yes, there was some collaboration
[20] because the air patterns in the ovens are different
[21] from oven to oven, and each oven is going to act a
[22] little differently.
[23] Q: Conagra by itself didn't develop the
[24] time and temperatures as set forth in these claims,

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[1] correct? You're under oath.
[2] A: I would say that we did.
[3] Q: Did you?
[4] A: Yes.
[5] Q: Let me ask you what time and
[6] temperatures did you collaborate with these third
[7] parties then that you testified to earlier? What
[8] are you referring to there?
[9] A: When I referred to the collaboration?
[10] Q: That's correct.
[11] A: Well, we wanted to understand their air
[12] flows and how that might impact the temperatures
[13] that we wanted to run. For instance, the —
[14] Q: To achieve the browning color?
[15] A: Yes. The Stein impingement oven has a
[16] significantly different air flow than the
[17] circulating air oven that Unitherm was selling, so
[18] we had to adjust our times and temperatures based
[19] on that air flow.
[20] Q: Stein was present when you adjusted
[21] those times and temperatures, correct?
[22] A: Yes, yes.
[23] Q: They assisted and participated in the
[24] adjusting of time and temperatures, correct?

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[1] A: They ran the temperature dials on the
 [2] ovens. We didn't touch their ovens. We basically
 [3] said let's run it at this temperature, and they
 [4] said, okay, this is the temperature.
 [5] Q: In turn, they would tell you let's try
 [6] it at this temperature and time?
 [7] A: There may have been instances like that.
 [8] Q: Right. Same with Unitherm, correct?
 [9] A: Sure.
 [10] Q: All right.
 [11] A: Sure.
 [12] Q: What else?
 [13] A: Okay. In No. 20, again there is the
 [14] laser light source.
 [15] Q: Okay.
 [16] A: We also mention microwave. We did some
 [17] tests with microwave in the pilot plant.
 [18] Q: Okay.
 [19] A: Point No. 23, again refining the
 [20] browning liquid pickup. Point No. 24 —
 [21] Q: When was that done?
 [22] A: The masking agents.
 [23] Q: 23, the liquid pickup refining.
 [24] A: To achieve the color objective, again

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[1] A: No.
 [2] Q: You just did it on your own?
 [3] A: Yes, we did the mixtures. We did the
 [4] percentages.
 [5] Q: Were you there?
 [6] A: I was there for some of it.
 [7] Q: Not all of it?
 [8] A: Not all of it.
 [9] Q: Were you there at the beginning? When
 [10] did you first become involved in applying this
 [11] liquid pyrolysis product to whole muscle meat, very
 [12] first time?
 [13] A: That was probably 1989, late 1989.
 [14] Q: Okay.
 [15] A: When I was first involved.
 [16] Q: And at that time, did you achieve — did
 [17] you apply liquid pyrolysis product in accordance
 [18] with the claims set out in No. 23?
 [19] A: I don't recall because I don't recall
 [20] pickup analysis at that time.
 [21] Q: When did you first become involved in
 [22] pickup analysis for liquid pyrolysis products when
 [23] they're applied to whole muscle meat products as
 [24] set out in any of these claims?

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[1] that was late '97, early '98.
 [2] Q: How would you achieve that? How would
 [3] you — this liquid pickup, isn't that just kind of
 [4] a fancy word for how much product you put on the —
 [5] how much browning agent you put on the whole muscle
 [6] meat product in order to achieve the browning color
 [7] you want?
 [8] A: The liquid pickup certainly represents
 [9] browning — the browning pyrolysis product adhering
 [10] to the product as it comes out of the bath.
 [11] Q: Right.
 [12] A: And then as it goes through the oven,
 [13] the amount that's remaining.
 [14] Q: Didn't Red Arrow help you with that
 [15] liquid pickup?
 [16] A: I don't believe so.
 [17] Q: You don't know, do you?
 [18] A: No, I do know. I know that Prem took
 [19] the data. Now, they may have been present when we
 [20] were running these tests because they supplied the
 [21] browning liquid pyrolysis product.
 [22] Q: Did you collaborate with anyone on how
 [23] much product to put on the whole muscle meat
 [24] product?

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[1] A: In early '98.
 [2] Q: That's the first of your involvement?
 [3] A: That's the first of mine.
 [4] Q: Other than that, your knowledge of this
 [5] liquid pickup would be based upon what Prem Singh
 [6] told you?
 [7] A: Yes.
 [8] Q: So you wouldn't have anything to refute
 [9] the fact that John Shoop and others might have
 [10] stated that they contributed to this liquid pickup
 [11] analysis, do you?
 [12] A: It's possible.
 [13] Q: You weren't involved either back in '93
 [14] or '94 with Unitherm when they applied liquid
 [15] pyrolysis products to whole muscle meat products,
 [16] were you?
 [17] A: I was not.
 [18] Q: Okay. Go ahead, what other claims?
 [19] A: Okay. No. 25 again working with the
 [20] turkey flavor and turkey broth or a mixture of the
 [21] two.
 [22] Q: All right. Anything else?
 [23] A: And that's it. And to the extent that
 [24] we refined temperatures again later on. The shrink

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[1] percentage, we knew that we could control shrink in
[2] '89 and '90 as well.
[3] Q: What were the operating oven
[4] temperatures of your Enersyst oven in 1989?
[5] A: They were approximately 400 to 450
[6] degrees. It could have been a little higher than
[7] that at times.
[8] Q: Fahrenheit?
[9] A: Fahrenheit.
[10] Q: In both ovens?
[11] A: I believe so.
[12] Q: What color product were you producing in
[13] 1989 from the Enersyst oven?
[14] A: I would characterize it as a caramel
[15] color. It was a lighter — sort of a tan beige
[16] color.
[17] Q: In 1989, what other products was Conagra
[18] producing in the area of deli products, turkey
[19] products, whole muscle meat products? You have the
[20] slice and serve?
[21] A: Sure. We had an oven prepared turkey
[22] breast, and we had a smoked turkey breast, and I'm
[23] not sure what other flavor varieties beyond that.
[24] Q: Any other — those were deli meats?

[1] Q: After 1989 but before 1997?
[2] A: You asked for a time.
[3] Q: That's a honey roasted and smoked. What
[4] color was that product?
[5] A: That was similar to a smoked.
[6] Q: That would be a light mahogany?
[7] A: Yes.
[8] Q: And where was that produced?
[9] A: I can't tell you exactly.
[10] Q: How many different plants that Conagra
[11] owns produce the oven prepared turkey breast?
[12] A: Today or then?
[13] Q: Then.
[14] A: Then. Oh, there were two possibilities.
[15] One was the Wells, Minnesota plant and — actually
[16] three possibilities. Another is the Jonesboro
[17] plant and another is the Longmont plant.
[18] Q: What about smoked — is that still
[19] produced today this oven prepared turkey breast?
[20] A: No.
[21] Q: When did you cease producing that
[22] product?
[23] A: In early '99.
[24] Q: Did a product replace that?

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[1] A: Yes.
[2] Q: Provided to convenient stores?
[3] A: Convenient stores would be one customer.
[4] Q: Food service?
[5] A: Food service could be a customer.
[6] Q: And who else?
[7] A: Delis.
[8] Q: Okay. What color was the oven prepared
[9] turkey breast in 1989?
[10] A: White.
[11] Q: What about the smoked turkey breast?
[12] A: It was a light mahogany, maybe mahogany
[13] but very light color.
[14] Q: What other products were developed by
[15] Conagra between 1989 and the filing of this patent
[16] that fall within this area of slicable deli turkey
[17] breast whole muscle meat products? Were there
[18] other products developed?
[19] A: We had a honey roasted and smoked deli
[20] turkey breast.
[21] Q: Honey roasted and smoked. When was that
[22] developed?
[23] A: I can't tell you exactly, but I believe
[24] it was after 1989 and before 1997.

[1] A: Yes.
[2] Q: Or did you just cease using it. What
[3] product replaced it?
[4] A: The Golden Oven Prepared.
[5] Q: Is that produced with the process as
[6] described in the '027 Patent?
[7] A: Yes.
[8] Q: Where is that produced?
[9] A: Jonesboro.
[10] Q: What color is that Golden Oven Prepared?
[11] A: It's a Golden Brown.
[12] Q: What about the smoked turkey breast,
[13] where was that produced in 1989?
[14] A: Three possibilities.
[15] Q: Same three, Wells, Longmont and
[16] Jonesboro?
[17] A: Yes.
[18] Q: Is that still being produced?
[19] A: Yes.
[20] Q: Same facilities?
[21] A: It's being produced in Jonesboro and
[22] Longmont.
[23] Q: When you ceased doing the slice and
[24] serve in 1998 at the Wells plant and you moved it

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[1] to the Jonesboro plant, what type of ovens were
 [2] producing that product now or in 1998?
 [3] A: I'm not sure if it was 1998 or 1999. I
 [4] think it was 1999. Could have been 2000 when we
 [5] moved that, 1999 or 2000.
 [6] Q: And what oven produces that slice and
 [7] serve?
 [8] A: We're using a — when we transferred it
 [9] down there, we were using an Alkar oven.
 [10] Q: Are you using a different oven now?
 [11] A: Yes.
 [12] Q: What oven now?
 [13] A: We're using the Berief, B-e-r-i-e-f.
 [14] Q: And that Berief oven, does that operate
 [15] at temperatures in excess of 1,000 degrees?
 [16] A: Yes.
 [17] Q: What temperature did the Alkar oven
 [18] operate at?
 [19] A: Less than 200 degrees.
 [20] Q: Was the slice and serve produced on a —
 [21] in an in-line process as described in Exhibit 3?
 [22] A: When?
 [23] Q: In '89, I'm sorry.
 [24] A: In '89, the slice and serve was produced

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[1] '97.
 [2] Q: Okay.
 [3] A: They were things like apple cinnamon,
 [4] pineapple, whatever.
 [5] Q: What color was the apple cinnamon?
 [6] A: It was sort of a reddish cinnamon color,
 [7] I think.
 [8] Q: What about the pineapple?
 [9] A: I think that was a pale color as best I
 [10] can recall. There were some other flavor varieties
 [11] as well, and I don't know exactly what they were.
 [12] There could have been a tomato based.
 [13] Q: Okay. Any other products after 1997,
 [14] what new products are being produced by — would it
 [15] be the Golden Oven Prepared, that's one?
 [16] A: Okay.
 [17] Q: What else?
 [18] A: Any other deli products, any other deli
 [19] turkey products?
 [20] Q: Yes.
 [21] A: All of that?
 [22] Q: All of that?
 [23] A: We are producing a line of products
 [24] that's under a brand called McKayla's. It's

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[1] in an in-line process as described in Exhibit 3, in
 [2] 1989.
 [3] Q: In '89, I'm sorry. And then how about
 [4] when it was moved in '98, '99 or 2000?
 [5] A: I'm not exactly sure, but I think it was
 [6] a batch process.
 [7] Q: Could have been an in-line process using
 [8] the Alkar oven, though?
 [9] A: No.
 [10] Q: What other process could it have been?
 [11] A: We have a carousel heating system there.
 [12] Q: Okay.
 [13] A: And so it could have gone through that.
 [14] Q: What was the color of that product, the
 [15] slice and serve again?
 [16] A: It was a beige type of color, the
 [17] caramel.
 [18] Q: So after '89 and before '97, you started
 [19] producing a honey roasted and smoked product. What
 [20] about after 1997, any new products?
 [21] A: There were some flavor varieties also
 [22] that were produced.
 [23] Q: After '89 and before '97?
 [24] A: I can't tell you that they were before

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[1] M-c-K-a-y-l-a's.
 [2] Q: Okay. That's a deli product?
 [3] A: Yes.
 [4] Q: When did you start producing that?
 [5] A: In 1999 or 2000. 2000, I believe.
 [6] Q: And is that a turkey product?
 [7] A: Yes.
 [8] Q: Whole muscle meat product?
 [9] A: Yes.
 [10] Q: Slicable deli whole muscle meat product?
 [11] A: Yes.
 [12] Q: Is that made with the process as
 [13] described in the '027 Patent?
 [14] A: No.
 [15] Q: What's that made with?
 [16] A: It's a stationary Alkar cook oven.
 [17] Q: What other products? What products are
 [18] made using the process as identified in the '027
 [19] Patent? Are they the — you have got the Golden
 [20] Brown turkey deli breast and a smoked deli turkey
 [21] breast. Is one of those the same as the honey
 [22] roasted and smoked?
 [23] A: No.
 [24] Q: Is one of those the same as the Golden

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[1] Oven Prepared?
[2] A: The Golden Oven Prepared is the oven
[3] roasted.
[4] Q: I'm sorry, you've lost me. I'm trying
[5] to match up — how many products do you produce
[6] from the '027 Patent?
[7] A: We have, I believe, three UPCs.
[8] Q: And what are the colors of those
[9] products?
[10] A: They're the Golden Brown products.
[11] Q: All three?
[12] A: Yes.
[13] Q: Any other products besides the three
[14] that are set out in UPC codes — any other products
[15] that you've developed and you now produce
[16] commercially other than what you've described, the
[17] three UPC codes, the McKayla's and this Golden Oven
[18] Prepared?
[19] A: I'm not sure I followed your question.
[20] Q: Are there any other products other than
[21] those?
[22] A: That we make that we sell to the deli?
[23] Q: Right.
[24] A: There are lots of products.

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[1] Q: Are those products anything other than
[2] Golden Brown?
[3] A: They are all other than Golden Brown.
[4] Q: None of those are Golden Brown then?
[5] A: Correct.
[6] Q: How about products you sell to the food
[7] service industry, what products are considered
[8] Golden Brown by you?
[9] A: There may be some of the Golden Brown
[10] product that's produced at the Jonesboro plant that
[11] also goes food service. That would be a small
[12] amount of that business.
[13] Q: Now, I want to make sure I'm clear here.
[14] Do you produce certain products only to sell to the
[15] food service industry versus selling to the deli
[16] market, or do you simply — well, that's a
[17] question.
[18] A: And the answer is going to be yes and
[19] no.
[20] Q: Okay, why?
[21] A: Depends upon the product. Some products
[22] will go both food service and deli, and other
[23] products are specifically deli, and other products
[24] are specifically food service.

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[1] Q: Okay. What I want to know now are there
[2] any other products other than what you've just
[3] stated that had this Golden Brown color or have
[4] this Golden Brown color that are not made with the
[5] process as set forth in the '027 Patent?
[6] A: Not that I'm aware of.
[7] Q: So we have it clear and since we're on
[8] that subject, the UPC codes, do you know what those
[9] are for the three products you produce using the
[10] process as set forth in the '027 Patent?
[11] A: 45300 dash I don't know, and the next
[12] one is a 45300 dash, and the next one is a 50100
[13] dash, and I don't recall the UPCs specifically.
[14] Q: On the 50100, would that be a dash 1775?
[15] A: Yes.
[16] Q: And that's a Healthy Choice Oven
[17] Roasted?
[18] A: Yes.
[19] Q: And you mentioned 45300. Could it be a
[20] dash 27312 which is a Butterball Oven Roasted?
[21] A: Could be.
[22] Q: You don't know. Who knows that
[23] information?
[24] A: If I saw the description and the sales

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[1] roll-up, I could probably tell you that.
[2] Q: What about the Eckrich, 46600-05682, an
[3] Eckrich Oven Roasted — now it's going to be
[4] Eckrich Golden Oven Roasted?
[5] A: I believe that that product was an
[6] oil-browned.
[7] Q: It was or is?
[8] A: I believe it is.
[9] Q: And I misspoke before. Actually the
[10] Healthy Choice is now called a Healthy Choice
[11] Golden Oven Roasted?
[12] A: Yes.
[13] Q: What was the residence time of the
[14] Enersyst oven after it was — the caramel was
[15] applied?
[16] A: It was around a minute.
[17] Q: That would be in what you have here as
[18] the dryer, that's a minute?
[19] A: Yes, a minute, approximately.
[20] Q: Did that ever change from 1989 to when
[21] you moved it — moved the product to Jonesboro?
[22] A: I don't know. I can't tell you that.
[23] Q: You talked about those color chips and
[24] the photo that you would provide to Jonesboro. Do

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[1] they keep those there at the plant?

[2] A: Yes.

[3] Q: In order to ensure this Golden Brown?

[4] A: Yes.

[5] Q: And that product is made from one or

[6] more of the claims as set forth in the '027 Patent?

[7] A: Yes.

[8] MR. CASTRO: We haven't seen those color

[9] chips, Bob, the color chip or the photographs, and

[10] I think they would be responsive to our —

[11] MR. SCHROEDER: We will look into that. I

[12] certainly wouldn't have considered the color chip

[13] to be a document anymore so than the equipment

[14] itself would be produced.

[15] MR. CASTRO: But the photograph.

[16] MR. SCHROEDER: Well, we'll look into the

[17] photographs.

[18] BY MR. CASTRO:

[19] Q: So when you moved the slice and serve to

[20] the Jonesboro plant, what's the process that

[21] produces that product now? You said it was a —

[22] initially an Alkar oven?

[23] A: Yes. I believe this is how they do it.

[24] I haven't been at the plant since we moved that

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[1] product there. We have a dip, that's a caramel

[2] dip, that the product goes into. And then at that

[3] time, I believe it was put back on racks and dried

[4] and then packaged, cut and packaged.

[5] Q: When you came up with this objective in

[6] 1998, why the Golden Brown color? This color

[7] objective in '97, I guess, is when you came up with

[8] it?

[9] A: It was 1997.

[10] Q: '97.

[11] A: The objective was set off of a

[12] Butterball Thanksgiving turkey as it came out of

[13] the oven, and so that in effect defined the Golden

[14] Brown that we were looking for. The "why" did we

[15] come up with it?

[16] Q: Yes.

[17] A: Our marketing group did a marketplace

[18] study and evaluated products in the marketplace

[19] against our white product, products like the Sara

[20] Lee product and the Boar's Head product.

[21] Q: Jennie-O product?

[22] A: No.

[23] Q: No Jennie-O product?

[24] A: Not that I recall. There was another

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[1] product in the marketplace that we may have looked

[2] at, and I can't tell you exactly for sure which

[3] product it was. Could have been a Dietz & Watson

[4] product.

[5] Q: There were, what, sensory tests, market

[6] test studies done?

[7] A: It could have been just an informal

[8] evaluation. It could have been a full consumer

[9] market research study. And both of those would

[10] influence the decision.

[11] MR. CASTRO: I'm sorry, is he going to testify

[12] as to market issues?

[13] MR. SCHROEDER: No.

[14] THE WITNESS: No.

[15] BY MR. CASTRO:

[16] Q: Someone else would better be able to

[17] testify — be in a better position to testify as to

[18] what products your existing turkey product was

[19] being compared to at that time, correct?

[20] A: Yes.

[21] Q: For instance, Willowbrook, you don't

[22] know?

[23] A: Don't recall that.

[24] Q: Hormel?

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[1] A: Don't recall that as being part of the

[2] study.

[3] Q: Could have been?

[4] A: Could have been. I don't recall that.

[5] Q: And those products that were being

[6] compared, were those the golden brown product from

[7] competitors, some of those products?

[8] A: They were oven roasted products.

[9] Q: Did they look golden brown?

[10] A: They were different. They were dark.

[11] Q: Did they look golden brown?

[12] A: I can't tell you that they were golden

[13] brown.

[14] Q: You can't recall?

[15] A: I can't recall or I can't tell you. I

[16] don't have them sitting here in front of me.

[17] Q: I'm basing this on your recollection.

[18] Were some of the products that your competitors

[19] were selling, did they appear to be golden brown in

[20] color?

[21] A: I don't know that I would say golden

[22] brown. They were certainly baked brown.

[23] Q: And appeared to be oven roasted?

[24] A: Yes.

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[1] Q: And for you, you wanted to achieve an
[2] oven roasted look, correct?
[3] A: What we wanted to achieve was a look
[4] that looked like a Butterball Thanksgiving turkey
[5] when you first bring it out of the oven.
[6] Q: Butterball oven roasted, how's that? Is
[7] that what you were trying to achieve? You just
[8] said a Butterball turkey just out of the oven.
[9] A: The reason we didn't characterize it as
[10] oven roasted was because we had an oven roasted
[11] product in the marketplace that was white, and so
[12] we wanted to make sure that we differentiated.
[13] Q: I understand. The only reason you
[14] didn't call it oven roasted is because you already
[15] had an oven roasted product that was white,
[16] correct?
[17] A: And the golden oven roasted really
[18] depicted what we had in mind for the product.
[19] Q: What color is a Butterball whole turkey
[20] when it comes out of the oven?
[21] A: It's pretty close to a golden brown.
[22] Q: That's what I thought.
[23] A: Have you cooked one?
[24] Q: Yes, I have tried. The existing product

[1] Q: What in your opinion is meant by natural
[2] brown? Do you have one?
[3] MR. SCHROEDER: The witness just answered that
[4] question.
[5] BY MR. CASTRO:
[6] Q: That's a dark brown. Is that what a
[7] turkey looks like when it comes out of the oven?
[8] A: No. When you said natural brown, that's
[9] what I thought of.
[10] Q: In your company, do you have a
[11] terminology for natural brown? Do you depict any
[12] of your products with a natural brown color?
[13] A: We might.
[14] Q: Do you know which products?
[15] A: I don't. It could be a brown and serve
[16] product.
[17] Q: So in '97, you were attempting to better
[18] compete with the products produced by other
[19] companies, is that fair to say?
[20] A: In '97, what we wanted to do is produce
[21] a product that was more desirable for consumers
[22] than the product we had.
[23] Q: Which was more desirable for consumers
[24] than other products that consumers had to select,

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[1] was called a Butterball Oven Roasted, right, and
[2] you wanted to switch it to a Butterball Golden Oven
[3] Roasted, is that correct?
[4] A: Yes, essentially. I don't know if they
[5] were golden oven roasted or golden oven baked.
[6] Q: This might clear things up for you.
[7] Here is a document your lawyers produced to me.
[8] That's a CRPF 07705 Golden Oven Roasted Summary of
[9] Changes. Is this around the time when you were
[10] looking at replacing various products with this
[11] golden brown product you've testified to today?
[12] A: I would think so, although I should
[13] probably ask our marketing person who will speak to
[14] these.
[15] Q: Okay. Is that Sue Burns?
[16] A: Yes.
[17] Q: Is there a difference between natural
[18] brown and golden brown in your mind?
[19] A: I don't know what natural brown is.
[20] Q: You put a whole turkey in the oven and
[21] it's cooked and you pull it out, would you consider
[22] that a natural brown color?
[23] A: It depends on which turkey and how you
[24] cook it.

[1] correct?
[2] A: Will you say that again?
[3] Q: Sure. You would rather — you were
[4] looking for a product that, when competing in the
[5] market with other competitors, the customers would
[6] choose your product over a competitors?
[7] A: Yes.
[8] Q: Okay. You may have answered this, but
[9] were some of those products that you were competing
[10] with, did they have a golden brown appearance?
[11] A: I don't know. I know that they were
[12] browned, they were baked. I don't know that
[13] they — I don't know that any of them had a golden
[14] brown.
[15] Q: But they had an oven roasted appearance?
[16] A: Yes.
[17] Q: Okay. A quick question on the HACCP,
[18] you know, those records you've got to keep and you
[19] said you keep them until — for the shelf life.
[20] Any of that product you produced, is it frozen,
[21] ultimately frozen?
[22] A: In some plants, we have products that
[23] are produced that are frozen.
[24] Q: Any from the Jonesboro plant?

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[1] A: No.
 [2] Q: Any from the Wells plant?
 [3] A: No.
 [4] Q: How long do you keep the HACCP records
 [5] from those plants where the product is frozen?
 [6] A: I can't tell you exactly, but I know
 [7] that we have some that will be at least a year.
 [8] Q: You mentioned a green ring on some of
 [9] the turkey products that you browned at Unitherm's
 [10] oven. What caused the green ring?
 [11] A: I don't know that it was ever defined
 [12] exactly.
 [13] Q: Well, was it from the Unitherm oven or
 [14] from some other source?
 [15] A: The green ring exhibited itself just
 [16] under the surface and approximately an eighth to a
 [17] quarter inch deep after the product was removed
 [18] from the bag and exposed to display lights, and
 [19] that happened on some of the product that we
 [20] produced during testing within a very short period
 [21] of time.
 [22] Q: But you don't know what caused it?
 [23] A: No, not exactly.
 [24] Q: Did you look at a Radiant Wall oven in

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[1] MR. SCHROEDER: Is this the one that was
 [2] raised yesterday?
 [3] MS. NASH: It was raised this morning.
 [4] MR. SCHROEDER: Well, you made the same
 [5] request.
 [6] MR. CASTRO: Yes, it wasn't as specific. I
 [7] didn't ask him what it dealt with.
 [8] BY MR. CASTRO:
 [9] Q: Did they take a license?
 [10] A: No.
 [11] Q: When was this letter written? When was
 [12] their inquiry made, I should ask?
 [13] A: I don't know exactly, but I would
 [14] estimate that it was in the year 2000.
 [15] Q: Who did you speak with at Alkar?
 [16] A: Bob Hanson.
 [17] Q: Anyone else?
 [18] A: Regarding this?
 [19] Q: Yes.
 [20] A: No.
 [21] Q: What about Stein when you went and
 [22] tested your products at the Stein facility, did
 [23] they talk to you about other competitors where
 [24] their oven was installed?

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[1] '97 or '98?
 [2] A: I don't believe so.
 [3] Q: Did you speak with Dave Cornelius?
 [4] A: I did not.
 [5] Q: At Radiant Wall regarding their ovens?
 [6] A: I did not.
 [7] Q: So you don't know whether Radiant Wall
 [8] had told you who else was using their ovens at that
 [9] time, do you?
 [10] A: No.
 [11] Q: When did Alkar ask you — did they ask
 [12] you for a license?
 [13] A: No.
 [14] Q: What did they ask you for?
 [15] A: They asked us for a copy of the patent
 [16] and a letter that they could share with their
 [17] customers regarding licensing opportunities.
 [18] Q: And did you provide those to them?
 [19] A: Yes.
 [20] MR. CASTRO: Bob, I think we've asked for that
 [21] information, and we haven't been provided it,
 [22] offers of license. There is not an offer of
 [23] license to Alkar which we have, nor a letter to
 [24] Alkar.

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[1] A: No.
 [2] Q: Did you ask?
 [3] A: No.
 [4] Q: How about Unitherm, didn't they tell you
 [5] that they had their ovens installed in other
 [6] facilities for competitors?
 [7] A: I know that David Howard mentioned that
 [8] he was selling ovens to our competitors, but I
 [9] don't know what they were using them for.
 [10] Q: Well, didn't Mr. Howard tell you they
 [11] were using them to brown product just like you were
 [12] running these tests for?
 [13] A: I don't recall that.
 [14] Q: But he could have?
 [15] A: It's possible.
 [16] Q: What was your purpose of visiting
 [17] PureLight?
 [18] A: The purpose for visiting PureLight was to
 [19] evaluate their UV system for reducing microbial
 [20] loads on ground beef.
 [21] Q: Any other reason?
 [22] A: No.
 [23] Q: While your employees were at the
 [24] PureLight facility, did they discuss other

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[1] processes?
[2] A: When Prem Singh saw the PureLight, he
[3] did discuss other processes.
[4] Q: What processes were those?
[5] A: He discussed with him a method for
[6] browning whole muscle turkey breast.
[7] Q: Anything else?
[8] A: Not that I'm aware of.
[9] Q: So when I talk about UPC codes today, I
[10] can't talk to you about those. You're not very
[11] familiar with — because it seems like there is
[12] three products that you produce with the process as
[13] claimed in the patent?
[14] A: Yes.
[15] Q: But I think we've identified two, and
[16] maybe you've identified all of them, but I want to
[17] make sure. You've got — I probably don't have
[18] them here. What are they?
[19] A: There is a one pack case Butterball
[20] Golden Oven Roasted, there is a two pack case
[21] Butterball Golden Oven Roasted, and there is a
[22] Healthy Choice Golden Oven Roasted.
[23] Q: The Butterball, are those the same UPC
[24] code?

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[1] A: The package is the same, but the case is
[2] different.
[3] Q: Okay. Does that mean that they're
[4] different UPC codes?
[5] A: Yes.
[6] Q: So that would get us to three?
[7] A: Yes.
[8] Q: Okay. I'm going to mark these as one
[9] Exhibit. I think it's Exhibit 5.
[10] These, Mr. Salm, were letters produced
[11] to us by your Counsel that pertain to the patent
[12] that were sent to third parties. I'm going to ask
[13] you to identify these for me, if you can.
[14] Before we get into that, when did you
[15] decide to patent this golden brown idea? Is it
[16] fair that I call it that?
[17] A: Yes.
[18] Q: When was the decision made to patent?
[19] A: It was either late '97 or early '98.
[20] Q: Who decided to file a patent on that
[21] process?
[22] A: Who decided to?
[23] Q: Yes.
[24] A: It was a joint decision.

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[1] Q: Made by?
[2] A: That was made by myself and Prem Singh
[3] and our legal counsel.
[4] Q: In-house, Mr. Gott, or someone else?
[5] A: Mr. Gott and our patent attorney
[6] counsel.
[7] Q: And who is that?
[8] A: It's represented by Mr. Schroeder.
[9] Q: At the time, was it also a gentleman by
[10] the name of Jeff Craft?
[11] A: I believe Jeff worked in Mr. Schroeder's
[12] company at the time.
[13] Q: So it was Mr. Schroeder who also made
[14] the decision to — assisted in the decision to file
[15] the patent?
[16] A: I'm not sure if it was Mr. Schroeder or
[17] Mr. Craft.
[18] Q: Okay. Why was the decision made to file
[19] a patent on this oven — on this golden brown idea?
[20] MR. SCHROEDER: Well, I'll ask the witness to
[21] answer that question only if he can do so without
[22] revealing any advice that he received from
[23] Mr. Craft or myself.
[24] THE WITNESS: Okay.

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[1] MR. SCHROEDER: Or any communications to
[2] either of us.
[3] BY THE WITNESS:
[4] A: Right. There were a number of factors
[5] that went into that decision but the primary reason
[6] that we pursued it in the first place is because
[7] our company was putting valuable money against a
[8] golden oven prepared product launch into the
[9] marketplace, and we felt that if we could protect
[10] that technology to produce that specific golden
[11] oven prepared product, that it was a good idea, so
[12] that's what really instigated that, the look at
[13] patenting it.
[14] BY MR. CASTRO:
[15] Q: Who looked at patenting it? Was that
[16] Prem Singh?
[17] A: Prem Singh certainly would have played a
[18] significant role in that.
[19] Q: Prior to that time, had you had any
[20] experience in the filing of a patent?
[21] A: Of this patent?
[22] Q: Any patent.
[23] A: Any patent?
[24] Q: Yes.

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[1] A: I actually prepared a patent while at
[2] Oscar Mayer, yes, in 1984 or something.
[3] Q: You did. Were you the inventor?
[4] A: Yes.
[5] Q: And you prepared the patent, is that
[6] correct?
[7] A: Some of it.
[8] Q: All right. And what was that patent
[9] pertaining to?
[10] A: I'm not at liberty to tell you.
[11] Q: Did the patent ever issue?
[12] A: I don't believe that — I left Oscar
[13] Mayer before the patent was actually filed. I
[14] don't know that Oscar Mayer actually filed the
[15] patent, and I don't know if they're protecting that
[16] with trade secret.
[17] Q: When was that, in 1985? You think you
[18] still have some kind of trade secrecy or
[19] confidentiality with them 17 years later?
[20] A: I'm not sure. It was a neat process,
[21] though.
[22] Q: When you prepared that patent, did
[23] anyone provide you advice on how to disclose prior
[24] art or whether prior art should be disclosed?

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[1] A: I don't recall.
[2] MR. SCHROEDER: Just a second. It seems to me
[3] that you are invading the attorney/client privilege
[4] of Oscar Mayer at this point.
[5] MR. CASTRO: I am not asking the substance. I
[6] am asking whether anyone provided him advice on
[7] prior art, and you can't invoke attorney/client
[8] privilege on behalf of —
[9] MR. SCHROEDER: As Counsel for the
[10] corporation, I can advise the witness that Oscar
[11] Mayer has an attorney/client privilege in
[12] communications that Dr. Salm may have had with
[13] their attorneys and that he should respect that
[14] attorney/client privilege. I don't have to raise
[15] the privilege. The privilege exists without being
[16] raised, and it exists until and unless it is
[17] waived.
[18] MR. CASTRO: Well, I appreciate the speaking
[19] objection, but the only one — it's not a valid
[20] objection. The only one who has the
[21] attorney/client privilege is Mr. Salm to raise.
[22] MR. SCHROEDER: No. The privilege belongs to
[23] Oscar Mayer, not Mr. Salm, and only Oscar Mayer can
[24] waive it.

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[1] MR. CASTRO: Well, not 17 years later in a
[2] piece of litigation totally unrelated to the
[3] communications.
[4] MR. SCHROEDER: Well, I am not aware of any
[5] time limit on the attorney/client privilege.
[6] MR. CASTRO: Well, I am.
[7] MR. SCHROEDER: Well, then you may advise your
[8] clients differently, but I think I will advise
[9] Dr. Salm that he should not reveal attorney/client
[10] privileged communications that he had while he was
[11] associated with Oscar Mayer.
[12] BY MR. CASTRO:
[13] Q: You have been so advised. Now I'm going
[14] to ask the question again. Were there discussions,
[15] not even with lawyers now, how's that, with anyone
[16] with regards to prior art and how you disclosed or
[17] whether you disclosed prior art in the patent?
[18] MR. SCHROEDER: Are you limiting it to
[19] non-lawyers?
[20] BY MR. CASTRO:
[21] Q: Right now other than lawyers.
[22] A: I don't really recall.
[23] Q: Have you ever had any training, other
[24] than communications with lawyers, have you had any

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[1] training with Oscar Mayer or Conagra regarding the
[2] disclosure of prior art or whether prior art should
[3] be disclosed in a patent?
[4] A: Only in discussion with Counsel.
[5] Q: For Oscar Mayer?
[6] A: Legal counsel. For our company.
[7] Q: Conagra as well?
[8] A: For Conagra.
[9] Q: How many conversations have you
[10] discussed prior art?
[11] A: I couldn't tell you. Several.
[12] Q: How many minutes did those conversations
[13] last?
[14] A: Oh, I couldn't tell you exactly.
[15] Q: Have you prepared or assisted in the
[16] preparation of any other patents other than the
[17] '027 Patent?
[18] A: Yes.
[19] Q: Which one?
[20] A: We have a patent application that is in
[21] now. We have a couple of patents that are in
[22] preparation now.
[23] Q: What about prior — I'm sorry, go ahead.
[24] A: That we haven't decided to file.

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[1] Q: What about prior to the filing of the
[2] '027 Patent, had you done any other types of work
[3] on patent preparation on behalf of Conagra?
[4] A: Yes.
[5] Q: How many?
[6] A: One for sure.
[7] Q: Was that a patent that was issued?
[8] A: Yes.
[9] Q: What was that patent?
[10] A: That patent was a process for a
[11] defatting turkey meat.
[12] Q: That was filed by Prem Singh?
[13] A: Yes.
[14] Q: In that patent, did you prepare or did
[15] you cause to be prepared a summary of the invention
[16] that you gave to your in-house lawyers?
[17] A: No.
[18] Q: Did you prepare or cause to be prepared
[19] a summary of invention with respect to the '027
[20] Patent?
[21] A: I certainly assisted with it. I don't
[22] know that I caused it to be prepared.
[23] Q: Well, did you assist in one to be
[24] prepared with regards to the defatting of turkey

[1] and so that is up to the individual.
[2] Q: The individual, the inventor?
[3] A: Yes, or the inventor's boss.
[4] Q: Who was Prem Singh's boss in 1998?
[5] A: I was.
[6] Q: Did Prem Singh come to you and ask you
[7] whether he should prepare a summary of invention?
[8] A: I don't recall.
[9] Q: Do you recall whether he asked for your
[10] approval?
[11] A: Excuse me, I got two things confused.
[12] You said summary of invention. I think I heard
[13] background of the invention.
[14] Q: Is there two separate things?
[15] A: Well, there is a background which
[16] entails what's currently out there.
[17] Q: All right.
[18] A: And then a summary of invention is a
[19] document that I believe specifically states this is
[20] the date that I created this idea, this is the date
[21] that I tested it, and these are the parameters
[22] around which I tested it.
[23] Q: The background, what information does
[24] that contain?

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[1] meat?
[2] A: No.
[3] Q: Was one prepared?
[4] A: Yes.
[5] Q: Is one prepared —
[6] A: I believe so. I don't know that for
[7] sure.
[8] Q: Is a summary of invention, as Prem Singh
[9] phrased it, is that prepared for every patent
[10] application that's going to be filed?
[11] MR. SCHROEDER: Objection, lacks foundation.
[12] BY THE WITNESS: No.
[13] BY MR. CASTRO:
[14] Q: When is a summary — when do you make
[15] the decision — or who makes the decision to
[16] prepare a summary of invention?
[17] MR. SCHROEDER: Objection, lacks foundation,
[18] calls for speculation.
[19] BY THE WITNESS:
[20] A: In our company?
[21] BY MR. CASTRO:
[22] Q: Yes.
[23] A: There isn't a procedure that's
[24] established for summary of invention preparation,

[1] A: As I understand it, the background of
[2] the invention is the first part of the patent that
[3] lays out the background of the invention.
[4] Q: For instance, in the '027 Patent under
[5] "Method for Browning Pre-cooked Whole Muscle Meat
[6] Products" on the second page, is that what you're
[7] talking about where it says background of the
[8] invention?
[9] A: Yes.
[10] Q: Was one of those prepared for this '027
[11] patent?
[12] A: Yes, it's here in the patent.
[13] Q: Well, did Prem Singh prepare it first?
[14] A: Prem Singh with contribution from other
[15] people.
[16] Q: Who else?
[17] A: I know that I contributed to it, and I
[18] know our patent counsel contributed to it, and I
[19] know that we had a technician contribute to it, and
[20] I'm not sure who else.
[21] Q: Who was the technician?
[22] A: It's our librarian.
[23] Q: Is the background of the invention —
[24] tell me the process you go through at Conagra to

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[1] decide whether to file a patent from the beginning
[2] of when someone comes to you, Mr. Salm, and says,
[3] you know, I've got this great idea and I'd like to
[4] file a patent on it, to the date, for now anyway,
[5] of when you then take that information to your
[6] legal counsel outside of the company?

[7] MR. SCHROEDER: After this answer, can we take
[8] a break?

[9] BY THE WITNESS:

[10] A: Okay. We don't have a set process that
[11] we go through and, so what I can describe are
[12] different ways that it could happen.

[13] BY MR. CASTRO:

[14] Q: Describe how it happened in the '027
[15] Patent case.

[16] A: With respect to the '027 Patent case, we
[17] had a discussion with our business partners and
[18] decided that this was going to be something that we
[19] wanted to pursue a patent on because of the amount
[20] of dollars we were placing on the product going
[21] into the marketplace.

[22] We then looked at, all right, is there
[23] anything out there that would be this process in
[24] the marketplace today. If you can't find anything,

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[1] you do to file a patent, and you mentioned that you
[2] talk about you look at the dollars you've put into
[3] the market, as to this '027 Patent that is, how
[4] many dollars, the amount of money you were going to
[5] invest as a company in this process. That's one
[6] item, correct?

[7] A: Yes.

[8] Q: Another item was that you were going to
[9] discuss it with your business partners. Who are
[10] your business partners?

[11] A: They would be the people who are
[12] responsible for the deli business.

[13] Q: And who are they?

[14] A: The principal in that would be Rich
[15] Scalise.

[16] Q: Someone within Conagra?

[17] A: Yes.

[18] Q: That's what you refer to when you talk
[19] about business partners?

[20] A: Yes.

[21] Q: And then you talked about, you know,
[22] looking at whether there is anything out there in
[23] the market like this process?

[24] A: Yes.

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[1] then you go to the next step, and you take a look
[2] at a literature search. We do a literature search
[3] based on key words. And after that and it still
[4] looks like there is nothing out there, if a person
[5] is equipped to write a patent rough draft, they
[6] will actually write a patent rough draft.

[7] And then they'll share that with our
[8] patent counsel, and that process will go back and
[9] forth until we finish with a patent application,
[10] and that patent application is then submitted to
[11] the patent office. The patent office reviews
[12] those, sends back questions. We go through the
[13] questions, answer those questions, resubmit that
[14] back to the patent office, and if it's as well
[15] written as this one is, it goes through in fairly
[16] short order. Is that understandable.

[17] Q: Yes.

[18] MR. SCHROEDER: Let's take a break now.

[19] MR. CASTRO: Yes.

[20] (WHEREUPON, a short break was
[21] taken.)

[22] BY MR. CASTRO:

[23] Q: Back on the record. You were testifying
[24] earlier, Mr. Salm, about what's contained or what

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[1] Q: Now, how did you do that with regards to
[2] this '027 Patent?

[3] A: We did it a couple of ways. As I
[4] mentioned, we tried to determine based on what we
[5] could see in the marketplace and then we did a
[6] literature search.

[7] Q: What do you mean what you could see?
[8] Did you go to plants, to facilities to see what
[9] kind of process they were running?

[10] A: No, no.

[11] Q: What do you mean by that?

[12] A: Well, we went into the marketplace and
[13] we tried to find products that would be similar to
[14] this golden oven prepared product oven roasted
[15] product of ours.

[16] Q: And you found those products, right?

[17] A: Did not.

[18] Q: Well, you don't know how those products
[19] were prepared, do you?

[20] A: I didn't see anything that looked like
[21] our product.

[22] Q: So if something is prepared identically
[23] to how you've laid it out in the patent but it
[24] doesn't produce a golden brown product, then it

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[1] doesn't infringe your patent?
[2] A: I would say that's correct.
[3] Q: Okay. So it all depends upon the color
[4] of the product, the finished product, after you
[5] follow the claims set forth in the '027 Patent?
[6] A: Yes.
[7] Q: Is it your testimony today that your
[8] competitors, none of your competitors, had a
[9] product similar in color to the product you
[10] produced in 1999 using the '027 Patent?
[11] A: In 1998?
[12] Q: Okay, '98.
[13] A: Yes.
[14] Q: None of them had a golden brown color?
[15] A: Yes.
[16] Q: Yes, none of them did?
[17] A: Yes, none of them did.
[18] Q: Okay. Who did that? Who did that
[19] sensory — would you call it sensory testing
[20] because I mean it's a visual, you're looking at the
[21] color of the product? Who performed that visual
[22] inspection? Was that done by the marketing people
[23] or who?
[24] A: No. There were a number of people that

[1] Q: And your testimony is today that none of
[2] those products were golden brown?
[3] A: Yes.
[4] Q: Okay. They weren't golden brown?
[5] A: That is correct.
[6] Q: Were they — did they have an oven
[7] roasted look?
[8] A: I would say yes.
[9] Q: Okay. Is there a difference in your
[10] opinion between oven roasted and golden brown?
[11] A: Yes.
[12] Q: What is that difference?
[13] A: It's a color difference. It's a
[14] brightness difference. It's a visual difference.
[15] Q: Is there a difference on this Hunter
[16] meter, this Hunter wand? Would there be a
[17] difference if you compared them with that?
[18] A: Yes.
[19] Q: All right. What's the range on that
[20] Hunter wand as to the golden brown color? I mean
[21] it can't be — every piece can't be exactly alike
[22] if you were to compare it as it comes out, right?
[23] A: That's correct.
[24] Q: So what is your range on that Hunter

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[1] were involved in that.
[2] Q: Name them.
[3] A: I know that Prem Singh was involved in
[4] that. I know that I was involved in that. I know
[5] that Rich Scalise was involved in that, and I
[6] believe that Rich Scalise asked his salespeople in
[7] the field.
[8] Q: What was your involvement in trying to
[9] see whether there was other product that looked
[10] golden brown? What did you do?
[11] A: I looked at deli cases in the
[12] marketplace.
[13] Q: You literally went to — what kind of
[14] stores do you got up here? What did you go to,
[15] like grocery stores?
[16] A: We have grocery stores that go by the
[17] name of Jewel and Dominicks.
[18] Q: Okay. So you walked into these — you
[19] yourself walked into these grocery stores and
[20] looked behind the casing, behind the glass case?
[21] A: Yes.
[22] Q: To see whether anyone had a golden brown
[23] product?
[24] A: Yes.

[1] wand?
[2] A: I don't know exactly. I know in the
[3] patent we give several examples.
[4] Q: Of ranges with the — I didn't see any
[5] examples in the claims. You have examples?
[6] A: In the body of the patent.
[7] Q: What about in the claims, any of the
[8] claims do you give a range for your —
[9] A: We do not in the claims.
[10] Q: All right.
[11] A: Although in the body of the text
[12] examples, we list LAB values and reference those as
[13] golden brown.
[14] Q: Where do you give LAB values in the
[15] patent?
[16] A: In the examples. Refer to column 6,
[17] Example 1, Example 2, Example 3. In column 7,
[18] Example 4 and Example 5.
[19] Q: Okay. So those gives ranges of LAB
[20] value, don't they? In other words, they're all
[21] different, correct?
[22] A: Yes.
[23] Q: If the product falls outside the ranges
[24] contained in these examples, do you still consider

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[1] it golden brown?
 [2] **MR. SCHROEDER:** I have an objection here that
 [3] it's beyond the competency of the witness. It
 [4] seems to me that you're now asking him to determine
 [5] the scope of the patent claim, and as well as being
 [6] beyond the competency of the witness, I think it's
 [7] also beyond the 30(b)(6) notice. We'll have expert
 [8] depositions in this case at the appropriate time.
 [9] I don't think this is it.

[10] Subject to that objection, the witness
 [11] can — if you want an amateur opinion, he can give
 [12] you his.

[13] **BY MR. CASTRO:**

[14] **Q:** Well, I think he's far more than an
 [15] amateur. Aren't you a doctor? What's your Ph.D.
 [16] in?

[17] **A:** It's in animal science.

[18] **Q:** How long have you been in the processing
 [19] business?

[20] **MR. SCHROEDER:** They don't have a lot of
 [21] courses in interpreting patent claims in animal
 [22] science.

[23] **BY MR. CASTRO:**

[24] **Q:** How long have you been in the food

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[1] **A:** Yes.

[2] **Q:** What else?

[3] **A:** I reviewed the patent.

[4] **Q:** Well, I mean I'm talking still about
 [5] this going to look if there is any other product
 [6] like this on the market.

[7] **A:** I know that we —

[8] **Q:** You, no one else. What else did you do?

[9] **A:** Sure. I talked with Rich Scalise who
 [10] got input from his salespeople.

[11] **Q:** All right. What did Prem do? Did you
 [12] ever go with Prem to look behind the deli counters?

[13] **A:** Yes, Prem and I went and looked at delis
 [14] together.

[15] **Q:** What products did you look at?

[16] **A:** We looked at deli turkey breast products
 [17] primarily.

[18] **Q:** Did you look at, oh, Boar's Head?

[19] **A:** Not in the deli case, but we had samples
 [20] of Boar's Head in the lab.

[21] **Q:** Where did you get those, just buy them?

[22] **A:** Yes.

[23] **Q:** Well, did you have other samples in the
 [24] lab?

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[1] processing business?

[2] **A:** 20 years.

[3] **Q:** All right. Now, tell me if, in your
 [4] opinion, if the product falls outside these LAB
 [5] ranges, is it still within the scope of the patent?

[6] **MR. SCHROEDER:** Objection.

[7] **BY THE WITNESS:**

[8] **A:** I couldn't tell you that. I don't know
 [9] what the ranges are around those.

[10] **BY MR. CASTRO:**

[11] **Q:** There is really no range as set forth in
 [12] the claims in this patent, are there?

[13] **MR. SCHROEDER:** Objection, same objection.

[14] **BY MR. CASTRO:**

[15] **Q:** Do you see any in the claims that are
 [16] set forth in the 36 claims, is there LAB values set
 [17] forth in those claims?

[18] **A:** There are no LAB values listed in the
 [19] claims.

[20] **Q:** Okay. Now, competitors — so you did
 [21] that. Did you do anything else besides look at the
 [22] products sitting in the case behind the deli
 [23] counter? Did you do anything else, you, before you
 [24] went and filed this patent?

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[1] **A:** Yes.

[2] **Q:** What samples?

[3] **A:** We had samples of Sara Lee.

[4] **Q:** Who else?

[5] **A:** And samples of Dietz & Watson.

[6] **Q:** Who else?

[7] **A:** And I mentioned Boar's Head.

[8] **Q:** Yes, you did.

[9] **A:** And I can't recall others.

[10] **Q:** With these other products, these Sara
 [11] Lee, Boar's Head and Dietz & Watson which you
 [12] had — was it at your test facility?

[13] **A:** Yes.

[14] **Q:** Did you taste those products or just
 [15] look at them visually?

[16] **A:** We did both.

[17] **Q:** Did you run that old Hunter wand over
 [18] them?

[19] **A:** I don't recall.

[20] **Q:** All right. I mean if you did, they
 [21] could have come within the ranges set out in those
 [22] examples, couldn't they have?

[23] **A:** I know that we did run a Hunter color
 [24] lab on some competitive samples, and they — I know

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[1] that they were not within this range.
[2] Q: Of the examples?
[3] A: I don't know exactly which products they
[4] were.
[5] Q: Okay. And they would only be certainly
[6] in the three that you've told me about, wouldn't be
[7] any others?
[8] A: That's likely right, yes.
[9] Q: Did you keep those results of those
[10] Hunter lab wand tests, Hunter wand tests?
[11] A: No, I did not. I don't think Prem did.
[12] We just pointed the gun.
[13] Q: Have you looked to see if you have
[14] those?
[15] A: Yes.
[16] Q: And none exist?
[17] A: Not that we could find.
[18] Q: Would those be important to keep if you
[19] are concerned about whether someone else in the
[20] industry already has a product out there that's
[21] similar to the product you want to file a patent
[22] upon?
[23] A: Well, if there was a product that came
[24] close to what our product was, certainly.

[1] A: Yes.
[2] Q: Those people you are looking at their
[3] product, it's Boar's Head, Dietz & Watson, Hormel,
[4] Jennie-O, Perdue, Sara Lee, Willowbrook Farms,
[5] Butterball, Healthy Choice — well, those are your
[6] three. Peter Eckrich, Healthy Choice and
[7] Butterball are yours, right?
[8] A: Yes.
[9] Q: Does that help refresh as to the
[10] competitors you looked at?
[11] A: I couldn't tell you that.
[12] Q: That's something better left for Sue
[13] Burns?
[14] A: Yes.
[15] Q: Do you remember looking at those
[16] products behind the deli counter?
[17] A: I know in our area we have Sara Lee, and
[18] I know that we have some Hormel product.
[19] Q: Did you look at the Hormel product?
[20] A: Yes.
[21] Q: None of it had this golden brown color?
[22] A: No. I believe the Hormel product was a
[23] smoked product.
[24] Q: Is it your testimony that if you have a

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[1] Q: Hey, what if someone said this does come
[2] close? Don't you think it would be good to keep
[3] those records to prove to them that before you
[4] filed your patent, that you could say that they
[5] didn't come within these examples anyway?
[6] A: Are you asking my opinion?
[7] Q: Yes.
[8] A: I didn't think of it at the time.
[9] Q: You didn't run one of those Hunter wands
[10] at the deli counters, did you?
[11] A: No.
[12] Q: Do you know if Prem did? Did he take
[13] one with him?
[14] A: No.
[15] Q: Did you go anywhere else? Did you go to
[16] any food service facilities?
[17] A: No.
[18] Q: I will hand you — and I am not going to
[19] mark it as an Exhibit. It's something that your
[20] office produced to me. Are these competitors of
[21] yours that you looked at their products back at the
[22] time?
[23] A: I expect that we would have.
[24] Q: Bates stamp number CRPF 07614?

[1] smoked product, that product wouldn't fall within
[2] the claims contained in the '027 Patent?
[3] MR. SCHROEDER: Objection as beyond the
[4] witness' competence and not within the scope of the
[5] 30(b)(6) notice. Go ahead and answer subject to
[6] that.
[7] BY THE WITNESS:
[8] A: Okay. I don't know, but I know that
[9] ours doesn't.
[10] BY MR. CASTRO:
[11] Q: Okay. Did you do anything else? Do you
[12] know if Prem did anything else regarding looking at
[13] any other products out there?
[14] A: I don't know.
[15] Q: All right. Did you check with any of
[16] your competitors as to whether they had a process
[17] similar to the one that's set forth in the '027
[18] Patent?
[19] A: I only talked to one.
[20] Q: Which one?
[21] A: I talked to Roger Howard at Boar's Head.
[22] Q: And what did you talk with Roger about?
[23] A: I didn't talk with him specifically
[24] about his process, but I talked with him about the

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[1] equipment he was using.
[2] Q: And what equipment was that?
[3] A: He was using a — I believe a Koppens
[4] oven at the time or the Boar's Head Company was
[5] using a Koppens oven at the time.
[6] Q: Were they using anything else, dip tank
[7] or atomizer?
[8] A: Not that I — no, not that we talked
[9] about.
[10] Q: Okay.
[11] A: And they were cooking their product for
[12] a significantly longer time.
[13] Q: Okay. Cooking it or browning it?
[14] A: I believe it was cooking it.
[15] Q: All right. Now, your product was a
[16] pre-cooked product that you had run through the
[17] process, right?
[18] A: Yes, yes.
[19] Q: After it's pre-cooked in the bag,
[20] correct?
[21] A: Yes.
[22] Q: Tell me what equipment you installed in
[23] order to perform the processes set forth in the
[24] '027 Patent?

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[1] A: We installed a stripping table.
[2] Q: Okay.
[3] A: We installed a degelatinizing area. We
[4] installed a dip tank. We installed a Koppens oven,
[5] and we installed a chiller.
[6] Q: Where did you get the stripping table?
[7] A: I believe it was a local manufacturer,
[8] stainless steel.
[9] Q: What about the degelatinizing area?
[10] A: I believe that was the same.
[11] Q: Was that a high heat oven, or what was
[12] it? What is it?
[13] A: No, it was a water shower with an air
[14] curtain after it.
[15] Q: Dip tank, where did you get the dip
[16] tank?
[17] A: The dip tank was from Red Arrow.
[18] Q: Red Arrow helped you design that dip
[19] tank, or did they just design it and sell it to
[20] you?
[21] That's a compound question. Did Red
[22] Arrow sell you that dip tank?
[23] A: Yes.
[24] Q: Koppens oven, was that a two zone oven?

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[1] A: Could be a three zone.
[2] Q: How did the three zone — you don't
[3] know?
[4] A: I believe it was — I don't know.
[5] Q: Who does know that information?
[6] A: I know Prem would know.
[7] MR. CASTRO: Are we going to have Prem to talk
[8] about that three zone oven?
[9] MR. SCHROEDER: I didn't plan on it.
[10] MR. CASTRO: Well, he doesn't have the
[11] information we need as to what process — what
[12] apparatus are used to produce the product that's
[13] the subject of this patent.
[14] MR. SCHROEDER: Well, I wouldn't say that.
[15] You asked a question to which he doesn't know the
[16] answer. Any witness we might produce might not
[17] know a question like that. If you think it's
[18] important, we will try to find out how many zones
[19] the oven has.
[20] MR. CASTRO: All right. I do think it's
[21] important. I would like to know the answer to that
[22] question.
[23] BY MR. CASTRO:
[24] Q: It could be three zones. What would the

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[1] three zones perform if there were three zones?
[2] MR. SCHROEDER: I object to the question as
[3] calling for speculation.
[4] BY MR. CASTRO:
[5] Q: If it is a three zone, what would they
[6] do?
[7] MR. SCHROEDER: Object to the question,
[8] calling for speculation.
[9] BY MR. CASTRO:
[10] Q: You can answer it?
[11] A: They would heat.
[12] Q: All three zones would just heat?
[13] A: Yes.
[14] Q: How. Do you know the residence time of
[15] the oven?
[16] A: Yes, approximately.
[17] Q: What is it?
[18] A: Five to seven minutes.
[19] Q: What temperatures?
[20] A: Between 400 and 450, 460 degrees.
[21] Q: In each zone?
[22] A: Yes.
[23] Q: Is that Koppens oven — or the chilling
[24] unit, where did you buy the chilling unit?

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[1] A: We bought the chilling unit from
[2] Northfield.
[3] Q: Northfield?
[4] A: Yes.
[5] Q: So everything that you're telling me
[6] today, is that what's outlined also in this process
[7] flow sheet that's Exhibit 3? It's got a stripping
[8] table, correct?
[9] A: Yes, it does.
[10] Q: Got the degelatinizing area?
[11] A: Yes, it does.
[12] Q: It's got the dip tank?
[13] A: Yes, it does.
[14] Q: And it's got an oven?
[15] A: Yes, it does.
[16] Q: And then a chilling unit, right?
[17] A: Yes, it does.
[18] Q: Okay. How is what you bought in 19 —
[19] did you buy this stuff all in 1998 or '99?
[20] A: 1998.
[21] Q: And when did you start producing product
[22] from the system?
[23] A: In December of 1998.
[24] Q: Is that system still in operation today?

[1] A: I don't know that you need that specific
[2] dip tank. You could buy any number of dip tanks.
[3] I don't know that you need the stainless steel
[4] tables that we constructed.
[5] Q: For the stripping table?
[6] A: Yes.
[7] Q: All right. Really when you put the
[8] product through the oven, it's a matter of setting
[9] the time and the residence time and the temperature
[10] in order to get the color product you want, is that
[11] true?
[12] A: It's a combination of what you put on
[13] the product.
[14] Q: Let's say you put a liquid pyrolysis
[15] product —
[16] A: How you put it on the product.
[17] Q: That means you remove the gelatin,
[18] right?
[19] A: The condition of the surface that you
[20] have on the product.
[21] Q: What's the condition?
[22] A: The condition is whether or not you have
[23] purge on the surface or whether or not you have a
[24] moisture layer on the surface.

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[1] A: Yes.
[2] Q: Any of these items changed, any of these
[3] five items?
[4] A: No.
[5] Q: Do you have an opinion as to which of
[6] these items you need in order to produce a product
[7] that falls within the claims of that '027 Patent?
[8] MR. SCHROEDER: Objection, beyond the
[9] competency.
[10] MR. CASTRO: I asked him if he has an opinion.
[11] MR. SCHROEDER: I understand you asked him
[12] that. I am still making my objection. That's also
[13] beyond the scope of the 30(b)(6) notice.
[14] BY THE WITNESS:
[15] A: I do have an opinion.
[16] BY MR. CASTRO:
[17] Q: What is it?
[18] A: I don't know that you need the chilling
[19] unit that we bought. I mean you could buy any
[20] number of chilling units.
[21] Q: All right.
[22] A: I don't know that you need that specific
[23] oven. You could buy any number of ovens.
[24] Q: All right.

[1] Q: So you got to remove the purge and dry
[2] off the surface, right?
[3] A: Yes.
[4] Q: Anything else you got to do?
[5] A: You have to put it in the solution.
[6] Q: Right.
[7] A: You have to have the right solution.
[8] Q: Right. Liquid pyrolysis products,
[9] turkey broth, chicken broth, things like that?
[10] A: Things like that.
[11] Q: Just a matter of how much of that
[12] product you put on the surface, right?
[13] A: Yes.
[14] Q: And then depending upon what color you
[15] want the product, it's just a matter of time and
[16] temperature, correct?
[17] A: No.
[18] Q: What else do you have to do?
[19] A: You also have to deal with the air flow,
[20] and it's the air flow at the surface of the
[21] product, and I believe that in Prem Singh's
[22] deposition, he went through that in fairly good
[23] detail.
[24] Q: Well, there is different kinds of air

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[1] flows with different kinds of ovens. You have got
[2] a convection oven, right, and you've got an
[3] impingement oven?
[4] A: Yes.
[5] Q: And it's just a matter of what type oven
[6] you have in order to determine what you set your
[7] temperatures at, correct?
[8] A: Yes.
[9] Q: Someone who is trained in that area
[10] could do that, couldn't they, other than Prem Singh
[11] or anybody else who allegedly invented that
[12] process?
[13] A: I'm not sure.
[14] Q: You could do it, couldn't you?
[15] A: I've been around this process a long
[16] time.
[17] Q: Could you do it?
[18] A: With some time.
[19] Q: Sure. Do you think the people at
[20] Koppens Ovens could do it?
[21] A: I'm not sure.
[22] Q: What about at Unitherm?
[23] A: I'm not sure.
[24] Q: What about at Jennie-O?

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[1] A: I'm not sure.
[2] Q: Within Conagra, have you ever taken any
[3] courses or seminars that deal with prior art, prior
[4] art as it pertains to filing of a patent?
[5] A: No.
[6] Q: Anybody ever told you what to consider
[7] prior art in assisting in the preparation of a
[8] patent application other than lawyers?
[9] A: Not that I recall.
[10] Q: Have lawyers ever told you what to
[11] consider in prior art when filing a patent?
[12] MR. SCHROEDER: You can answer yes or no.
[13] BY THE WITNESS:
[14] A: Yes.
[15] BY MR. CASTRO:
[16] Q: Did a lawyer in this case give you
[17] advice as to what they considered prior art prior
[18] to the filing of this '027 Patent.
[19] He can answer yes or no.
[20] MR. SCHROEDER: No, no. It's not true that
[21] every question can be answered yes or no. At some
[22] point, you get into the substance of the advice. I
[23] will instruct the witness not to answer that
[24] question. I think that's substantive.

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[1] MR. CASTRO: I will ask it again to make sure
[2] the record is clear.
[3] BY MR. CASTRO:
[4] Q: Did any lawyer advise you what prior art
[5] was with respect to this '027 Patent?
[6] MR. SCHROEDER: Instruct the witness not to
[7] answer.
[8] BY MR. CASTRO:
[9] Q: My next question is did you ask any
[10] lawyer what you should consider as prior art prior
[11] to the filing of this '027 Patent?
[12] MR. SCHROEDER: Instruct the witness not to
[13] answer, attorney/client privilege.
[14] MR. CASTRO: It's a yes or no question.
[15] MR. SCHROEDER: The fact that it's a yes or no
[16] question doesn't mean that it doesn't invade the
[17] attorney/client privilege. We can go on this way
[18] all day.
[19] BY MR. CASTRO:
[20] Q: Did you ever ask a lawyer what to
[21] consider as prior art before you filed the '027
[22] Patent?
[23] MR. SCHROEDER: You can answer that yes or no.
[24] BY THE WITNESS:

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[1] A: Yes.
[2] BY MR. CASTRO:
[3] Q: Did you ask Mr. Schroeder?
[4] MR. SCHROEDER: I'll instruct the witness not
[5] to answer that. I think you're getting too
[6] specific.
[7] BY MR. CASTRO:
[8] Q: Did you ask Mr. Craft?
[9] MR. SCHROEDER: You can answer that yes or no,
[10] if you recall.
[11] BY THE WITNESS:
[12] A: I don't recall who it was.
[13] MR. CASTRO: So it could have — how is it
[14] objectionable and you're directing your client
[15] witness not to answer when I ask him whether he
[16] asked you, but it's not objectionable if I ask Jeff
[17] Craft because at the time Craft was his counsel.
[18] MR. SCHROEDER: You are obviously trying to
[19] define exactly where the line is here. I am not
[20] going to debate that with you. I will just
[21] instruct him when to answer and when not to answer.
[22] If you think that I am wrong and you want to make a
[23] motion, go right ahead.
[24] MR. CASTRO: Well, I have traveled up here at

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[1] great time and expense, and it seems inconsistent
[2] to direct the witness not to answer only because of
[3] the person I've asked.

[4] **MR. SCHROEDER:** Whether it seems inconsistent
[5] or not, the witness has testified he doesn't
[6] remember who it was, so it seems to me the point
[7] that you're arguing about is moot.

[8] **BY MR. CASTRO:**

[9] **Q:** Did you ask Mr. Gott what to consider as
[10] prior art before that '027 Patent was filed?

[11] **MR. SCHROEDER:** You can answer yes or no.

[12] **BY THE WITNESS:**

[13] **A:** I believe that would be yes.

[14] **BY MR. CASTRO:**

[15] **Q:** Did you ever show — did you ever
[16] consider Exhibit No. 3 to be prior art?

[17] **MR. SCHROEDER:** Let's find out what Exhibit
[18] No. 3 is.

[19] **MR. CASTRO:** Flow sheet, process flow sheet.

[20] **MR. SCHROEDER:** Just a second. You are asking
[21] the witness if he considered that to be prior art?

[22] **MR. CASTRO:** That's correct.

[23] **MR. SCHROEDER:** Go ahead.

[24] **BY THE WITNESS:**

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BY THE WITNESS:

[1] **A:** If you utilized this system exactly as
[2] it is, I'm not sure that you could produce a golden
[3] brown color. Maybe you could, maybe you couldn't.

[4] **BY MR. CASTRO:**

[5] **Q:** You could. You could, right?

[6] **A:** In a production system? I'm not sure.

[7] **Q:** Well, all you'd have to change out is
[8] instead of a caramel, you'd put in, what, a
[9] pyrolysis product there? In other words, you could
[10] just erase the caramelizer and put pyrolysis
[11] product?

[12] **A:** In a production system?

[13] **Q:** Well, no, just in that diagram.

[14] **MR. SCHROEDER:** That diagram doesn't produce a
[15] product.

[16] **BY THE WITNESS:**

[17] **A:** Right.

[18] **BY MR. CASTRO:**

[19] **Q:** Now, if you wanted to change out the
[20] system, you would just need a system that had
[21] different oven temperatures, correct, for
[22] production purposes?

[23] **A:** No.

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[1] **A:** Yes, there are aspects of that.

[2] **BY MR. CASTRO:**

[3] **Q:** Why wasn't that disclosed?

[4] **A:** We —

[5] **MR. SCHROEDER:** Objection, it calls for
[6] speculation, beyond the witness' competency, and
[7] outside the scope of the 30(b)(6) notice. Go
[8] ahead.

[9] **MR. CASTRO:** Go ahead.

[10] **MR. SCHROEDER:** Without revealing any
[11] attorney/client privilege.

[12] **THE WITNESS:** So should I go ahead?

[13] **MR. SCHROEDER:** If you know the answer on your
[14] own without repeating anything that lawyers have
[15] told you, go ahead.

[16] **THE WITNESS:** Okay.

[17] **BY MR. CASTRO:**

[18] **Q:** Let me ask you first because you are
[19] reading parts of the patent. Was Exhibit No. 3
[20] disclosed as prior art on the '027 Patent?

[21] **A:** No.

[22] **Q:** Okay. Now I'll ask you why wasn't it
[23] disclosed, with the same objection noted?

[24] **MR. SCHROEDER:** Same objection.

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[1] **Q:** What else would you need that's
[2] different?

[3] **A:** Well, let's see, you need different
[4] ingredients going in.

[5] **Q:** Right, pyrolysis product instead of
[6] caramel?

[7] **A:** Sure.

[8] **Q:** Okay.

[9] **A:** The times that you would spend in the
[10] oven.

[11] **Q:** Residence times, correct?

[12] **A:** Would have to be different, and, yes,
[13] that might be it.

[14] **Q:** Well, is it it or that might be it?

[15] **A:** Yes, I think that's it.

[16] **Q:** All right. So again I will ask you why
[17] is it that you didn't disclose that as prior art in
[18] the application?

[19] **MR. SCHROEDER:** Objection.

[20] **MR. CASTRO:** Same objection is noted.

[21] **MR. SCHROEDER:** No, it's not.

[22] **MR. CASTRO:** He hasn't answered the question.

[23] **MR. SCHROEDER:** I understand he hasn't

[24] answered the question. I'm making my objection.

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[1] Then he answers the question. My objection is that
[2] it calls for speculation, it lacks foundation, it's
[3] beyond the competency of the witness, and it's
[4] outside the 30(b)(6) notice.

[5] **BY THE WITNESS:**

[6] **A:** So we weren't producing a golden brown
[7] product off of this line. We were producing a
[8] caramel product off of that line.

[9] **BY MR. CASTRO:**

[10] **Q:** That's why?

[11] **A:** Pretty much.

[12] **Q:** Anything else?

[13] **A:** No, I think that's it.

[14] **Q:** Let's look at — what's the quantity —
[15] you can't give me a quantity. Can you give me
[16] dollars of product that's produced in the United
[17] States of product produced by the '027 Patent?

[18] **A:** Did we supply —

[19] **MR. SCHROEDER:** I think this is really not
[20] something that this witness is designated for.

[21] **MR. CASTRO:** You told me that as to Paragraph
[22] 8, he could talk about the dollars. I'm going to
[23] try to help you, but I can't — some of the numbers
[24] are these financial numbers. Tell me if I am

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[1] assume you, Conagra, saw this as a very valuable
[2] process, is that correct?

[3] **A:** What I said is that we were planning on
[4] investing a lot of money in launching this product
[5] into the marketplace.

[6] **Q:** How much money, do you know that?

[7] **A:** I don't.

[8] **Q:** Are we thousands or millions, or do you
[9] know?

[10] **A:** I don't know.

[11] **Q:** Did you look at any analysis as to the
[12] cost savings to the company? I mean it's one thing
[13] to know the money you're going to throw into a
[14] project. It's also another to realize the savings
[15] as a result of implementing a new process. Did you
[16] look at anything with respect to cost savings?

[17] **A:** Yes.

[18] **Q:** Did someone prepare information or
[19] documents with respect to cost savings because I
[20] haven't seen anything?

[21] **MR. SCHROEDER:** That is included, if you want
[22] to call it savings, in the financial information
[23] that was provided, and so that again will be the
[24] subject of a witness testifying tomorrow.

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[1] wrong —

[2] **MR. SCHROEDER:** I might have made a mistake in
[3] putting this into the record, but our intent with
[4] respect to 8 was that Dr. Salm would testify but
[5] not with respect to the quantities and that would
[6] be the subject of the witness that we're producing
[7] tomorrow.

[8] **MR. CASTRO:** But as to dollars, he can?

[9] **MR. SCHROEDER:** No, dollars, I am including
[10] that within quantities.

[11] **MR. CASTRO:** Oh, okay. Oh, I thought it was
[12] dollars.

[13] **MR. SCHROEDER:** I think I made that specific
[14] when we talked about this before. At any rate,
[15] this witness doesn't have that information.

[16] **BY MR. CASTRO:**

[17] **Q:** You don't know the quantities or dollar
[18] amounts that are produced by this process?

[19] **A:** I would have to refer to our records.

[20] **MR. SCHROEDER:** We have given you
[21] documentation on that, but this is not the witness
[22] who can explain that documentation.

[23] **BY MR. CASTRO:**

[24] **Q:** When you decided to file this patent, I

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[1] **MR. CASTRO:** Okay.

[2] **MR. SCHROEDER:** For your information, there is
[3] no savings. There is a cost.

[4] **BY MR. CASTRO:**

[5] **Q:** Would you agree with me that there is
[6] a — if it takes a million dollars a year to
[7] produce a product in batch houses and it only takes
[8] 500 — this is a hypothetical — \$500,000 a year to
[9] produce it in an in-line process, as you have
[10] described in the '027 Patent, would you consider
[11] that a cost savings to the company?

[12] **A:** We weren't producing this product in
[13] batch houses.

[14] **Q:** Prior to the in-line smoking browning
[15] process?

[16] **A:** Correct.

[17] **Q:** Okay. Well, however you were producing
[18] it, you were producing it actually — how were you
[19] producing it?

[20] **A:** What we produced was an oven roasted
[21] product that was in a cook-in-bag, and that's where
[22] we stopped.

[23] **Q:** That was that white coloring?

[24] **A:** Yes.

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[1] Q: Okay. How were you producing your
[2] smoked product?
[3] A: The smoked product was produced by going
[4] through the cook-in-bag process all the way through
[5] chill, then stripping it out, putting it back in
[6] smoke houses and smoking it.
[7] Q: Did you produce any of your smoked
[8] product through this in-line process?
[9] A: No.
[10] Q: Do you know of anyone who does?
[11] A: No.
[12] Q: Have you been told from anyone who may?
[13] A: A smoked product?
[14] Q: Yes.
[15] A: No.
[16] Q: Do you know of anyone who produces a
[17] brown product through the process described in the
[18] '027 Patent?
[19] A: Because I sat in on the Bob Wood
[20] deposition for Jennie-O and Bob Wood testified that
[21] they were using this patented process for producing
[22] product, that's the only instance I am aware of.
[23] Q: Is that product that's produced, is that
[24] a golden brown color?

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[1] A: I don't know.
[2] Q: Have you seen that product?
[3] A: I have not.
[4] Q: Did you look at it back in '98, any of
[5] their product?
[6] A: We looked at Jennie-O product. We did
[7] not find a golden brown product.
[8] Q: Is it your testimony today that if it's
[9] not a golden brown product, it doesn't fall within
[10] your patent?
[11] MR. SCHROEDER: Objection, lacks foundation,
[12] beyond the competency of the witness and outside
[13] the 30(b)(6) notice.
[14] BY MR. CASTRO:
[15] Q: If you can answer it.
[16] A: That would be my opinion.
[17] Q: Okay. What products of other companies
[18] are competitive with the products produced by the
[19] '027 Patent?
[20] A: Excuse me, ask that again.
[21] Q: Yes. What products are competitive with
[22] your —
[23] MR. SCHROEDER: I don't believe that that
[24] question falls within any of the areas which this

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[1] witness is designated.
[2] MR. CASTRO: Item No. 10.
[3] MR. SCHROEDER: Just a second.
[4] MR. CASTRO: Substitute products or other
[5] processes which are competitive with products
[6] produced by the '027 Patent.
[7] MR. SCHROEDER: Well, if you mean substitute
[8] in a marketing sense, it's probably a better
[9] question for another witness, but we'll let
[10] Dr. Salm answer it. If you're talking about in a
[11] marketing sense, I don't think it's within his area
[12] as a 30(b)(6) witness.
[13] BY MR. CASTRO:
[14] Q: Go ahead.
[15] A: Okay. I'm sure that there are a lot of
[16] products that would be substitute products. This
[17] product is typically bought in the deli, and there
[18] are multiple products in the deli that are used by
[19] the consumer. They typically buy it sliced and
[20] then use it for sandwiches, so other products that
[21] they would buy from the deli that could be used for
[22] sandwiches would be roast beef type of products,
[23] ham type of products, different flavored type of
[24] products. In fact, you could do dry sausage and

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[1] bologna in loaves. In its extreme, cheese might be
[2] an example of a substitute. Consumers could go to
[3] the packaged meat case and buy pre-sliced,
[4] pre-packaged products that could be used as
[5] substitutes. So there is really a broad range.
[6] Q: Would the companies that I identified
[7] earlier in your market study, would those be
[8] companies that produce product that's competitive
[9] with the products produced by the '027 Patent?
[10] A: I would expect so.
[11] Q: What about other processes, do you know
[12] of any other processes that compete with this — is
[13] it a process to you, or is it just an end result in
[14] this '027 Patent?
[15] A: It's a golden brown product that results
[16] from this process.
[17] Q: Process that — do you know of any other
[18] competing processes?
[19] A: Sure. You could do this in an oven.
[20] You could do it without adding a pyrolysis product.
[21] Q: Oven, you mean batch house?
[22] A: Yes, stationary oven or a long cook
[23] oven.
[24] Q: Any other processes that are

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[1] competitive?
[2] A: No, not that I know of.
[3] Q: What are the benefits of doing it the
[4] way it's described in the '027 Patent in your
[5] opinion? Well, not in your opinion, Conagra's
[6] opinion, what are the benefits?
[7] A: It produces a consistent golden brown
[8] color product with a nice surface.
[9] Q: What about time savings?
[10] A: For us, at the time, it was actually an
[11] increase in time.
[12] Q: What about for your competitors?
[13] A: I don't know.
[14] Q: What about if you cooked — if you
[15] produced a product from a batch house, does that
[16] take longer than in your process set forth in the
[17] '027 Patent?
[18] A: I would expect it would, yes.
[19] Q: How much longer?
[20] A: I don't know. It all depends on your
[21] concentrations and your air flow and your
[22] temperatures that you use and the type of oven that
[23] you have.
[24] Q: Does a batch house — in your

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[1] experience, that's how you smoke part of your
[2] product, right?
[3] A: We smoke products in batch houses, yes.
[4] Q: How long does it take to smoke products
[5] in batch houses?
[6] A: It depends on the house that we use, but
[7] anywhere from 20 minutes to two hours, three hours.
[8] Q: Can you smoke product using your
[9] process?
[10] A: I know in the background of the
[11] invention, we describe the processes that are
[12] in-line that smoke products and produce smoked
[13] products.
[14] Q: My question is can you smoke product
[15] using your process?
[16] A: I don't know that you can get a golden
[17] brown smoked product. I don't know. I just don't
[18] know that. I suppose with the right combination of
[19] ingredients, maybe you could.
[20] Q: If a competitor smoked the product using
[21] the process as set forth in the patent, would that
[22] be — would that fall within the claims of the
[23] patent?
[24] A: If they're using a pyrolysis product on

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[1] the surface and following the procedures outlined
[2] in the patent.
[3] MR. SCHROEDER: This is subject to my
[4] objection of beyond the witness' competence,
[5] outside the scope of the notice and lacking
[6] foundation, but go ahead.
[7] BY MR. CASTRO:
[8] Q: Go ahead.
[9] A: Okay. If they were going to produce a
[10] golden brown color as defined in the examples in
[11] our patent, I would expect so.
[12] Q: Any other benefits to using this
[13] process? Is there a yield savings?
[14] A: It was actually a decrease in yield for
[15] us.
[16] Q: What were your yields prior to going to
[17] this?
[18] A: The oven roasted product that we were
[19] selling was sold in a cook-in-bag, so essentially
[20] what we put into the oven was sold.
[21] Q: What are the yields you achieve using
[22] this process?
[23] A: They are 97, 96 percent cook yields.
[24] They may have an occasional 98. We may have an

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[1] occasional 95.
[2] Q: Anyone else — any other company produce
[3] this product for you using the process?
[4] A: No.
[5] Q: What do you use the Berief oven for?
[6] A: The Berief oven is being used for — I'm
[7] not sure I should answer that.
[8] MR. CASTRO: Subject to a protective order.
[9] He has produced documents relating to the Berief
[10] oven. There is a patent that's been filed now that
[11] deals with high temperature browning. I haven't
[12] read it.
[13] THE WITNESS: Do you have a copy of the patent
[14] application?
[15] MR. CASTRO: Yes, he sent it to me.
[16] MR. SCHROEDER: I did?
[17] MR. CASTRO: You guys produced it. Not the
[18] application. There is a patent issued.
[19] THE WITNESS: There is not a patent issued on
[20] that.
[21] MR. SCHROEDER: Why don't we see what you're
[22] talking about?
[23] MR. CASTRO: I don't know if I have it here
[24] because I just received it. I may not have brought

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[1] it because I didn't have — I didn't bring that.
[2] **MR. SCHROEDER:** Patent issued to —
[3] **MR. CASTRO:** Off the record for a minute.
[4] (WHEREUPON, discussion was had
[5] off the record.)
[6] **MR. SCHROEDER:** On the record, we have
[7] stipulated that the following portion of the
[8] deposition until otherwise noted will be designated
[9] attorneys eyes only.
[10] (WHEREUPON, the following
[11] proceedings were had
[12] designated attorneys' eyes
[13] only:)
[14] **BY MR. CASTRO:**
[15] **Q:** Mr. Salm, I was asking about the Berief
[16] oven, and I believe my question was what do you
[17] produce with the Berief oven?
[18] **A:** We're producing smoked turkey breast and
[19] honey roasted and smoked turkey breast.
[20] **Q:** Since when?
[21] **A:** Since September of 2000.
[22] **Q:** Are those new products?
[23] **A:** No.
[24] **Q:** Just a different way to process them?

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[1] **A:** Yes.
[2] **MR. SCHROEDER:** You said September of 2000?
[3] **THE WITNESS:** Yes.
[4] **BY MR. CASTRO:**
[5] **Q:** What process did they replace?
[6] **A:** The products were being placed in
[7] stationary smoke houses using natural smoke.
[8] **Q:** Batch houses as I call them?
[9] **A:** Yes.
[10] **Q:** That process, that streamlines — this
[11] new process streamlines the production, doesn't it?
[12] **A:** Yes.
[13] **Q:** Instead of four to six hours, it's,
[14] what, 15, 20 minutes?
[15] **A:** 60 seconds.
[16] **Q:** 60. And that's done with an oven
[17] temperature — how many stages of the oven?
[18] **A:** One.
[19] **Q:** Is that in excess of 1,000 degrees?
[20] **A:** Yes.
[21] **Q:** What's the temperature?
[22] **A:** I can't tell you exactly, but it's 1,000
[23] to 1,200, maybe 1,300 degrees.
[24] **Q:** Who came up with that process?

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[1] **A:** That's a process that Prem Singh came up
[2] with.
[3] **Q:** When did he invent that process?
[4] **A:** I can't tell you exactly when.
[5] **Q:** Do you have an idea?
[6] **A:** Sometime after 1990. I don't know.
[7] **Q:** Were you involved in the conception of
[8] that invention? Do you understand my question?
[9] **A:** No. Could you explain it to me?
[10] **Q:** Was Prem Singh the only one who came up
[11] with that idea of — this product is smoked in that
[12] oven?
[13] **A:** Yes.
[14] **Q:** Is Prem Singh the one that came up with
[15] that idea?
[16] **A:** Yes.
[17] **Q:** Is he the only one that came up with
[18] that idea?
[19] **A:** I believe so.
[20] **Q:** Did you assist him in any part of the
[21] development of this process that's used in the
[22] Berief oven?
[23] **A:** Yes.
[24] **Q:** Which part?

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[1] **A:** The funding of it.
[2] **Q:** Conagra funded it?
[3] **A:** Yes.
[4] **Q:** Now, I'm talking about you personally.
[5] **A:** No.
[6] **Q:** Did anyone else at Conagra, that you
[7] know of, assist Prem with the conception and
[8] development of this process?
[9] **A:** I don't believe so.
[10] **Q:** And where is the Berief oven? Is that
[11] in Jonesboro?
[12] **A:** It's in Jonesboro.
[13] **Q:** How is that process different than the
[14] process as claimed in the '027 Patent?
[15] I don't want to make it that general. I
[16] can make it quicker. Is this product that's
[17] produced in this Berief oven, is it golden brown?
[18] **A:** No.
[19] **Q:** What color is the smoked turkey breast?
[20] **A:** It's more mahogany color.
[21] **Q:** What about the honey roasted?
[22] **A:** The same.
[23] **Q:** What product is that intended to compete
[24] with, if you know?

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[1] A: It would be other deli products.
[2] Q: Does it compete with the golden brown
[3] products that you produced out of the —
[4] A: Yes.
[5] Q: — Stein oven? Is it a Stein oven?
[6] A: No.
[7] Q: I'm sorry, Alkar?
[8] A: No.
[9] Q: What oven is it?
[10] A: Koppens.
[11] Q: It competes with those products?
[12] A: Yes.
[13] MR. CASTRO: I think that's it.
[14] MR. SCHROEDER: The attorneys' eyes only
[15] portion of the deposition ends at this point.
[16] BY MR. CASTRO:
[17] Q: Now, I want to make sure — because I
[18] want to catch all the product that's produced with
[19] the process that's described in the '027 Patent,
[20] and some of these questions may better be left for
[21] the marketing and the financial people except that
[22] you're involved in the processing side, correct, so
[23] I'm going to ask you these.
[24] The Peter Eckrich Deli, did you

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[1] previously testify that that's oil-browned?
[2] A: I was told that that is an oil-browned
[3] product.
[4] Q: Oil-browned products, do those typically
[5] provide a 98 percent fat free product?
[6] A: They can.
[7] Q: Can they?
[8] A: Yes.
[9] Q: But they would have to state — and I'm
[10] going to show you CRPF 07634. That is part of the
[11] marketing information provided to us, and it has
[12] Peter Eckrich Deli Skinless Golden Oven Roasted
[13] Turkey Breast, Fully Cooked. Now, that's browned
[14] with caramel color, boneless with broth.
[15] A: That would indicate that that is also
[16] put through this process.
[17] Q: The '027 process?
[18] A: Yes.
[19] Q: Okay. So that's another product?
[20] A: Yes, but you should ask the marketing
[21] person about that.
[22] Q: When you were looking at these deli
[23] counters to find product to see if it matched what
[24] you were going to produce, you mentioned a few.

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[1] Let's see if I've got them all that you could
[2] remember.
[3] Sara Lee, Boar's Head, Dietz & Watson.
[4] Did you mention Jennie-O? Did you look at Jennie-O
[5] products?
[6] A: I mentioned Hormel.
[7] Q: Hormel, all right. Let's see,
[8] Willowbrook, was that one you mentioned?
[9] A: I did not.
[10] Q: Okay. Did you look at Willowbrook?
[11] A: I don't recall that.
[12] Q: Did you have any Willowbrook product at
[13] your test facility?
[14] A: I don't recall.
[15] Q: Could have, but you just don't recall?
[16] A: Could have.
[17] Q: Would that have been a product then that
[18] you were looking at a competitor that you would
[19] have tried to look at?
[20] A: It's not a competitor that I'm am
[21] familiar with.
[22] Q: But if it's a competitor that's listed
[23] in these marketing documents, it may have been
[24] someone you looked at?

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[1] A: Yes.
[2] Q: Would it have been someone the marketing
[3] people would have looked at to view their color?
[4] A: It's possible.
[5] Q: Okay. When was the company first able
[6] to achieve a golden brown color on product?
[7] A: I can't tell you exactly. We didn't
[8] measure those colors in 1989 and '90. It's
[9] possible that we could have achieved those colors
[10] then in testing that was done. It's possible that
[11] we could have achieved those colors anywhere along
[12] the way. We didn't measure those until 1997.
[13] Q: It's possible you could have achieved
[14] the golden brown color with ovens provided by
[15] Stein, correct?
[16] A: Yes.
[17] Q: It's possible you could have achieved
[18] the golden brown color with ovens provided by
[19] Koppens, correct?
[20] A: Yes.
[21] Q: It's possible you could have achieved
[22] the golden brown color with ovens provided by
[23] Unitherm, correct?
[24] A: Yes.

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[1] Q: You didn't measure with this Hunter
[2] wand, is that why you don't know whether you
[3] achieved the golden brown color?
[4] A: Yes.
[5] Q: What did you buy from Convenience Food
[6] Group in 1998 or '99? Did you acquire an oven from
[7] Convenience Food Group?
[8] A: In 1998, we purchased a Koppens oven.
[9] Q: So they make the Koppens oven?
[10] A: Yes.
[11] Q: And that's still in production today?
[12] A: Yes.
[13] Q: It's still operating?
[14] A: Yes.
[15] Q: Do you still produce a cooked in the bag
[16] turkey product, a white turkey product?
[17] A: I don't know exactly all the products
[18] that are produced in the Longmont facility, but
[19] there may be some white products that are produced
[20] there. I don't believe that we produce any of
[21] those in Jonesboro.
[22] Q: Well, when you're here testifying today,
[23] you're talking about all the facilities at Conagra,
[24] aren't you? I want to make sure we're clear.

[1] Inc. So, in other words, it's a sister corporation
[2] to the defendant.
[3] BY MR. CASTRO:
[4] Q: I see. Do sister corporations share
[5] technology?
[6] A: Sometimes.
[7] Q: Did you share this '027 technology with
[8] your sister company Longmont?
[9] A: Yes, I believe so.
[10] Q: Okay. So you think the Longmont
[11] facility still produces a white cooked in the bag
[12] turkey product?
[13] A: Yes.
[14] Q: All right. Does Swift-Eckrich still
[15] produce a cooked in the bag white turkey product?
[16] A: I don't believe so.
[17] Q: Is that —
[18] A: It's a no, as far as I know. And the
[19] reason I say that is because there may be some
[20] product that is sold to a specialty account that is
[21] a very small account, and I don't know all the
[22] accounts.
[23] Q: Where would that product be produced?
[24] Where are specialty account products produced?

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[1] MR. SCHROEDER: Wait a minute. Are you
[2] talking about all the facilities of Conagra or all
[3] the facilities of Conagra Refrigerated Foods?
[4] MR. CASTRO: The party to this lawsuit.
[5] MR. SCHROEDER: Okay.
[6] THE WITNESS: Swift-Eckrich.
[7] MR. SCHROEDER: Swift-Eckrich.
[8] MR. CASTRO: Is the Longmont facility part of
[9] the defendant in this case?
[10] MR. SCHROEDER: Is that part of Swift-Eckrich,
[11] Inc?
[12] THE WITNESS: I don't know. I don't think so.
[13] MR. SCHROEDER: I don't believe so either.
[14] THE WITNESS: I think it's Longmont Foods.
[15] It's primarily a food service facility.
[16] MR. CASTRO: It's a subsidiary of Conagra
[17] Refrigerated Foods?
[18] MR. SCHROEDER: I don't believe it is.
[19] MR. CASTRO: Is it not?
[20] MR. SCHROEDER: No. To the best of my
[21] knowledge, it is not.
[22] THE WITNESS: It's a subsidiary of Conagra for
[23] sure.
[24] MR. SCHROEDER: Subsidiary of Conagra Foods,

[1] A: It could be produced in any one of the
[2] plants depending on the product.
[3] Q: How many pounds of product per day are
[4] run at the Jonesboro facility with the process as
[5] outlined in that patent, the '027 Patent?
[6] A: It would be a range of production
[7] volume, and of course the range can go from 0 to
[8] 80,000 pounds a day.
[9] Q: On average, how many pounds per day? I
[10] know it could go from 0 to 80,000. On average, how
[11] many pounds of product are produced with the '027
[12] Patent?
[13] A: It would be a range of 60,000 to 80,000
[14] pounds per day.
[15] Q: And when did production begin?
[16] A: December of 1998.
[17] Q: How many pounds of product was produced
[18] under the old labels per day?
[19] A: Similar amount.
[20] Q: So, if I understand your testimony, in
[21] 1997, prior to the change to the golden brown, the
[22] facility produced 60,000 to 80,000 pounds per day
[23] of product?
[24] A: Of —

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[1] Q: Of the products that this golden brown
[2] replaced?
[3] A: Yes. And you can ask — is Tim going to
[4] testify towards volumes?
[5] MR. SCHROEDER: Volumes of the current
[6] product, yes.
[7] THE WITNESS: Okay.
[8] MR. CASTRO: Can Tim testify as to volumes of
[9] the former product, product that it replaced?
[10] MR. SCHROEDER: I don't think he's coming
[11] equipped with those numbers. If you have anything
[12] you need produced in that regard, you can show it
[13] to him. He can probably explain it. But I haven't
[14] asked him to be prepared with that information.
[15] BY MR. CASTRO:
[16] Q: Was this new golden brown product, did
[17] the company experience increased sales of that
[18] product over the product it replaced?
[19] A: Yes.
[20] Q: And what were those increased sales?
[21] A: I can't tell you exactly.
[22] Q: Approximate?
[23] MR. SCHROEDER: Now you've gone into an area
[24] that maybe one of the other witnesses could talk

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[1] about. I am not instructing him not to answer.
[2] BY MR. CASTRO:
[3] Q: Sure. I'm not going to stay in it too
[4] long.
[5] A: I can estimate 10 to 30 percent
[6] depending on when.
[7] Q: 10 to 30 percent per year?
[8] A: Yes.
[9] Q: Did you have any problems when you
[10] installed the Koppens oven? It's the Koppens oven
[11] that runs that line, is that right?
[12] A: Yes.
[13] Q: Did you have any start-up problems with
[14] that oven when you first installed it?
[15] A: Not that I'm aware of.
[16] Q: What about with the operation of that
[17] oven after it was installed?
[18] A: There was only one issue, and that issue
[19] was the carrying chain through the oven was
[20] replaced before the Koppens Company expected that
[21] it would have to be replaced, and so it was
[22] replaced.
[23] Q: How much was that?
[24] A: It was a small amount.

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[1] Q: As I understand, the only line that
[2] produces product from the '027 Patent is at the
[3] Jonesboro plant, is that correct?
[4] A: Yes.
[5] Q: Tell me, if you can, what problems you
[6] had with the Unitherm oven when it was at the
[7] facility, the testing facility, in late '95 and
[8] early '96?
[9] A: In late '95 and early '96, we were
[10] attempting to produce a smoked product using liquid
[11] smoke, and we were not able to get an acceptable
[12] flavor profile for that product, and I don't
[13] believe — I don't know if it was the Unitherm oven
[14] that caused that or what.
[15] Q: Anything else?
[16] A: Not that I am aware of, but I wasn't in
[17] the test facility at the time. I know that in
[18] Prem's deposition, he talked about the Unitherm
[19] oven testing in the pilot plant.
[20] MR. CASTRO: That's right, Bob. You had
[21] mentioned that I believe that Prem's testimony
[22] could be utilized for this category.
[23] MR. SCHROEDER: Which, by number, are we
[24] talking about?

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[1] MR. CASTRO: It's No. 14, the satisfactory or
[2] unsatisfactory performance of Unitherm's RapidFlow
[3] ovens.
[4] MR. SCHROEDER: With the proviso that I
[5] indicated before.
[6] BY MR. CASTRO:
[7] Q: Have you spoken to anyone from Red Arrow
[8] concerning the satisfactory or unsatisfactory
[9] performance of the Unitherm RapidFlow oven at your
[10] facility in '95 and '96?
[11] A: No.
[12] Q: At the time the Unitherm oven was at
[13] your facility in '95 and '96, was J.B. Weatherspoon
[14] the head of Research & Development?
[15] A: Yes.
[16] Q: At the company?
[17] A: Yes.
[18] Q: Would Mr. Weatherspoon have been
[19] responsible for the testing of that oven at that
[20] facility?
[21] A: Prem would have been responsible for
[22] that testing, and Prem reported to J.B.
[23] Q: If there were any problems with the
[24] oven, you would have expected Prem to report to

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[1] J.B.?
[2] A: In my opinion, he would have.
[3] Q: If you were the head of Research &
[4] Development for the company back in '95 and '96, as
[5] J.B. was, you would have expected Prem Singh to
[6] report to you any problems that there may have been
[7] with the Unitherm oven?
[8] MR. SCHROEDER: Objection, calls for
[9] speculation.
[10] BY MR. CASTRO:
[11] Q: You can answer it.
[12] A: I know that Prem runs into problems on
[13] occasion, solves those problems, and goes about his
[14] business. Sometimes I know and sometimes I don't.
[15] Q: Okay. I think Mr. Hussain yesterday
[16] talked about a weekly meeting that was conducted or
[17] maybe conducted at your facility. Did you hear him
[18] testify as to that?
[19] A: No.
[20] Q: There were weekly meetings. Do you have
[21] weekly meetings within the company to talk about
[22] Research & Development?
[23] A: No, not specifically.
[24] Q: Where were you in '95 — up to 1996,

[1] was there.
[2] Q: With respect to Red Arrow, tell me what
[3] communications you had, you and Conagra had with
[4] Red Arrow concerning Unitherm. Let's start in the
[5] earliest date that you know of as the 30(b)(6)
[6] witness for the company.
[7] A: The discussions that I know about are
[8] discussions that Prem had with Chad Anderson and
[9] planning for the tests at Unitherm.
[10] Q: Those were tests in 1998?
[11] A: Yes.
[12] Q: All right.
[13] A: And I had discussions with Gary
[14] Underwood regarding the involvement of various Red
[15] Arrow people with Unitherm.
[16] Q: That was recent, wasn't it?
[17] A: Yes.
[18] Q: How many times have you talked with
[19] Mr. Underwood about Red Arrow employees'
[20] involvement with Unitherm?
[21] A: A couple, a couple of times.
[22] Q: Twice?
[23] A: Two or three.
[24] Q: When was the first?

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[1] January of 1996, where were you located?
[2] A: I was in the 2001 Butterfield Road
[3] address office building.
[4] Q: That's not the Elk Grove facility or the
[5] Downers Grove?
[6] A: That's the Downers Grove office.
[7] Q: Is that at the test facility?
[8] A: No.
[9] Q: During that time, did you ever talk with
[10] Prem Singh? Let's say 1993 to '96, did you ever
[11] talk with Prem Singh about his involvement with
[12] Unitherm?
[13] A: No.
[14] Q: Did you ever talk with Syed Hussain
[15] concerning his involvement with Unitherm between
[16] 1993 and 1996?
[17] A: No.
[18] Q: Since then have you spoken to Syed
[19] Hussain concerning his involvement with Unitherm?
[20] A: Yes.
[21] Q: And what did you discuss?
[22] A: We discussed the reason for going to the
[23] Unitherm facility in Elk Grove, and we discussed
[24] the products that were run, and we discussed who

[1] A: I can't recall that exactly.
[2] Q: Before the lawsuit was filed?
[3] A: It was likely after.
[4] Q: Was it before or at the time we first
[5] met with you and your lawyer in Chicago?
[6] A: I don't recall that.
[7] Q: And what did you talk about in
[8] particular with regards to Red Arrow's employees'
[9] involvement with Unitherm?
[10] A: I know in discussions — and it may have
[11] been in the David Howard deposition — that there
[12] were statements made about what Red Arrow people
[13] were supposed to have told us that none of our
[14] people could recall that they were told to us, and
[15] so I asked Gary Underwood and his people if they
[16] had.
[17] Q: What were those statements?
[18] A: I believe that David Howard said that he
[19] told Ron Ratz and/or John Shoop to tell us about
[20] our competitors who were using Unitherm ovens on
[21] pre-cooked whole muscle products.
[22] Q: When did Mr. Howard state that he told
[23] Ron Ratz and John Shoop?
[24] A: I don't recall the dates.

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[1] Q: And what was Mr. Underwood's response?
[2] A: He said that he would check with John
[3] and Ron.
[4] Q: And did he?
[5] A: He checked with John, and Ron is no
[6] longer an employee of Red Arrow.
[7] Q: What did he tell you that John said?
[8] A: He said that John in no way did that.
[9] Q: What did he tell you about Ron Ratz?
[10] A: He said he was no longer an employee of
[11] Red Arrow's.
[12] Q: Did you ever talk to Ron Ratz about it?
[13] A: Yes.
[14] Q: What did he say?
[15] A: Ron Ratz said that he did not.
[16] Q: What else?
[17] A: What else what?
[18] Q: What else did you talk with Gary
[19] Underwood about? You said you mentioned in regards
[20] to the David Howard testimony in his deposition
[21] concerning that he told Red Arrow to tell Conagra
[22] about — that its competitors were using the
[23] process that he demonstrated, right?
[24] A: Yes.

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[1] Q: What else did you tell Gary Underwood
[2] about David Howard's testimony?
[3] A: I don't know that I told him anything
[4] about David Howard's testimony.
[5] Q: Well, you already told me —
[6] A: Other than I wanted to find out whether
[7] or not those people actually told us those things.
[8] I don't know that I told him that David Howard said
[9] those things.
[10] Q: Did you ask him whether Red Arrow shared
[11] confidential information with Unitherm that was
[12] given to Red Arrow by Conagra?
[13] A: No.
[14] Q: Did you ask him whether Unitherm
[15] demonstrated a process very similar to what's
[16] claimed in the '027 Patent?
[17] A: I don't know what you mean by very
[18] similar.
[19] Q: How about similar? Do you know what the
[20] word similar means? Did you ask Gary Underwood
[21] whether any of these employees of Red Arrow were
[22] with Mr. Howard when Unitherm demonstrated a
[23] process that was similar to that described in this
[24] '027 Patent?

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[1] A: I don't know that we talked about it in
[2] those terms.
[3] Q: In what terms did you discuss it?
[4] A: We talked about a golden brown process.
[5] Q: What about a golden brown process?
[6] A: Well, whether or not you could produce a
[7] golden brown product with this in those
[8] demonstrations.
[9] Q: Which demonstrations?
[10] A: Any demonstrations that they might have
[11] been involved with Red Arrow on and Unitherm on.
[12] Q: And what did he say?
[13] A: He wasn't sure.
[14] Q: Did he ask John Shoop or Ron Ratz?
[15] A: I don't know that.
[16] Q: So he never got back to you on that
[17] issue?
[18] A: Right. However, I did ask him about
[19] whether or not there was any process in existence
[20] that could deliver a golden brown color prior to
[21] the 1997 date, and they didn't know of any.
[22] Q: Why 1997?
[23] A: It's the filing date or a year before
[24] the filing date.

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[1] Q: Did you ask Gary Underwood to ask Ron
[2] Ratz and John Shoop, or did you just ask Gary
[3] Underwood — let me rephrase it.
[4] Did Gary Underwood, when he told you he
[5] didn't know whether there was a process in place by
[6] your competitors which could produce a golden brown
[7] product, did he advise you whether he had talked to
[8] John Shoop or Ron Ratz about that?
[9] A: Yes.
[10] Q: And did he?
[11] A: Yes.
[12] Q: And neither one of them said or both of
[13] them said they didn't know?
[14] A: John Shoop didn't know of any, and he
[15] didn't mention if he had talked to Ron Ratz.
[16] Q: Did you ask Ron Ratz, when you talked
[17] with him, whether he knew a process that could
[18] produce a golden brown product?
[19] A: Yes.
[20] Q: What did he say?
[21] A: No.
[22] Q: Did you talk with anyone else from Red
[23] Arrow?
[24] A: Chad Anderson.

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[1] Q: About the same topics?
[2] A: Yes.
[3] Q: Anyone else?
[4] A: Not that I'm aware of.
[5] Q: If you run this process in the '027
[6] Patent and you increase the temperature and you
[7] reduce the belt speed, would the product be darker?
[8] A: Are you changing any other variables?
[9] Q: No.
[10] A: It could be.
[11] Q: If you increased — or decreased the
[12] temperature and sped up the belt speed and produced
[13] product as described in the '027 Patent, would the
[14] product be lighter in color?
[15] A: It could be.
[16] Q: Would the product be not — would the
[17] product not be golden brown if you increased the
[18] belt speed and reduced the temperature?
[19] A: It's possible.
[20] Q: How about if you kept the temperatures
[21] the same as set forth in the patent but you
[22] increased the belt speed, would the product
[23] produced be not golden brown?
[24] A: It's possible.

[1] seminar that was conducted by Unitherm and Red
[2] Arrow in January, February of 1994?
[3] MR. SCHROEDER: Object on the grounds it
[4] assumes a fact not in evidence with respect to the
[5] word seminar.

BY THE WITNESS:

A: No.

BY MR. CASTRO:

[9] Q: Have you spoken to any other third
[10] parties, you or anyone at Conagra, concerning
[11] Unitherm relating to the process described in the
[12] '027 Patent?

A: Not that I'm aware of.

[14] Q: We talked about the tests that were
[15] conducted with the 'other ovens. Were there any
[16] presentations or demonstrations made to third
[17] parties concerning the '027 Patent process?

A: Say that again.

[19] Q: Sure. Were there any demonstrations
[20] made to third parties regarding the '027 Patent
[21] process?

[22] A: When we did testing at Koppens, when we
[23] did testing at Unitherm, when we did testing at
[24] Stein, when we did testing at Heat & Control.

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[1] Q: How about if you kept the temperature
[2] the same and you slowed down the belt speed, would
[3] the product produced be darker than golden brown?
[4] A: It's possible.
[5] Q: Did you talk with Gary Underwood about
[6] anything else? Those two areas, the golden brown
[7] product and the — whether Unitherm had told them
[8] to tell Conagra about other companies who are using
[9] the process, anything else?
[10] A: I talked to Gary Underwood about a
[11] request that was made of their counsel for John
[12] Shoop being available either as a witness or as a
[13] for a deposition.
[14] Q: When was that?
[15] A: When was that?
[16] Q: Yes.
[17] A: Within the past month.
[18] Q: How many times have you spoken with Ron
[19] Ratz since the filing of the lawsuit?
[20] A: Once.
[21] Q: When was that?
[22] A: Within the past two months.
[23] Q: Did you talk with Ron Ratz about the
[24] demonstration that was conducted — excuse me, the

[1] Q: Tell me, if you can, specifically what
[2] happened when you went to the Unitherm facility in
[3] February of 1998?
[4] A: We arrived at the facility, talked with
[5] David Howard. There may have been a receptionist.
[6] We went down into the shop area and prepared to run
[7] the product through. We got the product out of the
[8] refrigerator. We filled a vat or a container with
[9] a Maillose solution. We dipped product into — we
[10] took the product out of the bags, and some of that
[11] was done through the bag stripper that David had in
[12] the shop.

[13] The product went through a
[14] degelatinizing step, and I believe that that was
[15] some sort of tube oven, and we dipped the product
[16] into the solution and then put the product on the
[17] oven belt, and it went through the oven belt, came
[18] out the other end.

[19] Q: How long did you keep the product in the
[20] solution?

A: I believe that we varied the times.

Q: What solution was it?

[23] A: We varied the solution. It was a
[24] Maillose and water solution.

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[1] Q: And did you do liquid smoke?
[2] A: I don't recall us doing liquid smoke.
[3] Q: Was anyone — was Chad Anderson there
[4] from Red Arrow?
[5] A: Yes.
[6] Q: Was anyone else there from Red Arrow?
[7] A: No, not that I recall.
[8] Q: How long was the residence time of the
[9] product?
[10] A: That I can't tell you exactly, but it's
[11] roughly seven minutes.
[12] Q: Those were whole muscle turkey products?
[13] A: Yes.
[14] Q: How many?
[15] A: There could have been eight, ten maybe.
[16] Q: Did you weigh those turkey products
[17] prior to being treated and put through the Unitherm
[18] oven?
[19] A: Some of them were weighed.
[20] Q: And were those same products weighed
[21] after they came out of the oven?
[22] A: Yes.
[23] Q: What were the yields?
[24] A: I don't know exactly, but they were

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[1] likely in the 96 percent area.
[2] Q: What was the color of that product?
[3] A: It was close to a golden brown color
[4] coming out of the oven.
[5] Q: They were being videoed during that —
[6] A: I don't remember that.
[7] Q: Have you seen that video?
[8] A: Yes.
[9] Q: Do you remember Mr. Howard videoing you?
[10] A: I don't remember it.
[11] Q: Okay. And were you pleased with the
[12] results of that test?
[13] A: There were some portions of it that we
[14] were pleased with.
[15] Q: Which portions?
[16] A: The color coming out of the oven looked
[17] good.
[18] Q: Any others?
[19] A: I thought the bag stripping device was
[20] interesting because I had never seen that before.
[21] I've seen it since, but I hadn't seen it before.
[22] Q: Anything else that you were pleased
[23] with?
[24] A: I think the — by pleased, meaning it

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[1] met our expectations. I think the yield met our
[2] expectations.
[3] Q: Was there anything that did not meet
[4] your expectations with regards to that testing?
[5] A: Yes. Actually the color retention on
[6] the product over time and the development of that
[7] green ring under the surface after it was exposed.
[8] Q: Now, you don't know what caused the
[9] green ring, right?
[10] A: Correct.
[11] Q: You don't know whether it was handling
[12] on the part of Conagra or whether it was due to the
[13] oven, correct?
[14] A: Correct.
[15] Q: What about with respect to the alleged
[16] color loss, what do you mean by — maybe those are
[17] my words, not yours, but what do you mean by the
[18] color? Did it fade?
[19] A: The intensity of the color faded more
[20] than we had expected.
[21] Q: At what point in time did it begin to
[22] fade?
[23] A: It was relatively short. I'd say a day,
[24] two days.

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[1] Q: So, I take it, the color was initially
[2] golden brown, and what did it fade to?
[3] A: It was getting closer to our caramel
[4] color, a lighter beige color.
[5] Q: But it was still a light golden brown or
[6] qualify for that?
[7] A: I can't say that.
[8] Q: Did you run the old Hunter wand on the
[9] product either at his facility or thereafter?
[10] A: I didn't.
[11] Q: Did anyone?
[12] A: I don't know if Prem did or not.
[13] Q: When you were at the facility at
[14] Koppens, did you run the Hunter color wand on their
[15] product?
[16] A: I didn't.
[17] Q: Did Prem?
[18] A: I don't know that.
[19] Q: What about at Stein?
[20] A: I know at Stein we did not while we were
[21] at Stein's facility.
[22] Q: Did you thereafter?
[23] A: I don't know if Prem did or not.
[24] Q: During any of these tests, did you run

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[1] the Hunter wand over product that was produced out
[2] of these third parties ovens?
[3] A: I know I didn't, but I know Prem did.
[4] Q: Where?
[5] A: I don't know exactly which products were
[6] run. In our pilot plant.
[7] Q: I am talking about when you sent product
[8] out to third parties and you went to their
[9] facility.
[10] A: We didn't take the Hunter color meter
[11] with us when we did that.
[12] Q: So you based your golden brown
[13] observation on visual observation?
[14] A: Yes.
[15] Q: And that could be done, right?
[16] A: And we had a photograph with us.
[17] Q: And you can visualize — you can by
[18] visual observance determine what's golden brown,
[19] can't you?
[20] A: If you have a reference, you can. To
[21] remember a golden brown, it's pretty tough to do
[22] that.
[23] Q: Is it? This golden brown reference, did
[24] you take those pictures into the deli counters when

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[1] you were looking at product?
[2] A: I remember on a couple of occasions
[3] doing that. We had a flier, and I know that David
[4] saw the flier. David Howard saw the flier that we
[5] brought along with us.
[6] Q: Okay. I'm talking about when you were
[7] at the deli food counters and when you were
[8] comparing products before you filed the patent, did
[9] you take this picture with you?
[10] A: Yes.
[11] Q: To all of those?
[12] A: No, it was not all of them because there
[13] were times when I would be near the stores on
[14] weekends and stuff that I would stop in.
[15] Q: And based upon that observation, you
[16] considered the product you observed as not being
[17] golden brown, is that correct?
[18] A: Yes.
[19] MR. CASTRO: Quick break, maybe five minutes.
[20] (WHEREUPON, a short break was
[21] taken.)
[22] MR. SCHROEDER: The witness now has answers to
[23] two questions that were posed earlier. I just
[24] wanted to let you know that. One, pertaining to

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[1] the number of zones in the oven, the other having
[2] to do with the weight food put of the Wells
[3] facility.
[4] MR. CASTRO:
[5] Q: Okay. Mr. Salm, what are the zones in
[6] that — is it the Berief oven?
[7] A: No, it's the Koppens oven.
[8] Q: How many zones?
[9] A: It's one.
[10] Q: And isn't it true that with regards to
[11] the Koppens oven, you had problems with the thermal
[12] oil heat exchanges?
[13] A: Not that I'm aware of.
[14] Q: You didn't recall bringing in a
[15] metallurgist to examine those heat exchanges?
[16] A: Nope.
[17] Q: But if the documents reflect that, then
[18] you don't have any reason to refute those, do you?
[19] A: Correct.
[20] Q: What about didn't you have to rewire
[21] that Koppens oven in some respects?
[22] A: Not that I'm aware of.
[23] Q: Now, with Red Arrow, did they tell you,
[24] when you spoke to Gary Underwood within the last,

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[1] what, year or two, that there were other companies
[2] using the Unitherm system? Did Gary tell you that?
[3] A: No.
[4] Q: Did you ask him?
[5] A: No.
[6] Q: Prior to filing of the patent in May of
[7] 1998, wasn't Conagra informed of other companies
[8] that were using the process that Unitherm
[9] demonstrated in '98?
[10] MR. SCHROEDER: Objection, assumes a fact not
[11] in evidence and misleading.
[12] BY MR. CASTRO:
[13] Q: No, did Conagra inform — did Unitherm
[14] inform you prior to filing of the '027 Patent that
[15] there were other companies using the process that
[16] was demonstrated at their facility in February of
[17] 1998?
[18] A: No.
[19] Q: Did they inform anyone at Conagra?
[20] A: Not that I'm aware of.
[21] Q: Did you disclose any trade secrets to
[22] Unitherm when you were at their facility in
[23] February of 1998?
[24] A: To the extent that we ran the tests to

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[1] achieve our targeted color, the color objective,
[2] that color objective for us and the fact that we
[3] were contemplating that was a trade secret.
[4] Q: Did you tell them that?
[5] A: Yes.
[6] Q: Did you have them sign a confidentiality
[7] agreement?
[8] A: No.
[9] Q: Don't you normally have vendors, third
[10] parties, sign confidentiality agreements prior to
[11] disclosing trade secrets?
[12] A: We normally leave that up to our
[13] purchasing group to have confidentiality agreements
[14] on file. That was a procedure prior to that.
[15] Q: You knew that there was no
[16] confidentiality agreement on file with Unitherm
[17] prior to the visit in February of 1998, didn't you?
[18] A: No, I did not.
[19] Q: Didn't Prem?
[20] A: No.
[21] Q: How do you know that?
[22] A: We talked about it.
[23] Q: Did you? Before you went or after?
[24] A: After.

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[1] Q: Why did you talk to him about it
[2] afterwards?
[3] A: Well, we signed a confidentiality
[4] agreement there.
[5] Q: Right.
[6] A: At David Howard's request.
[7] Q: Right.
[8] A: And I wanted to know if we had a
[9] confidentiality agreement with Unitherm.
[10] Q: And did you look for one?
[11] A: We looked for one, and we came across
[12] one that was signed. We don't know when it was
[13] signed.
[14] Q: Signed by David Howard?
[15] A: Yes.
[16] Q: Undated?
[17] A: Yes.
[18] Q: Were you concerned that that agreement
[19] may not be effective?
[20] A: I didn't really think about it.
[21] Q: Did you tell your legal counsel?
[22] A: I don't recall.
[23] MR. CASTRO: Is he going to testify as to
[24] No. 27, Bob, as to market information? I don't

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[1] have it noted here.
[2] MR. SCHROEDER: No.
[3] MR. CASTRO: What about to 28?
[4] MR. SCHROEDER: No.
[5] MR. CASTRO: 29?
[6] MR. SCHROEDER: No.
[7] BY MR. CASTRO:
[8] Q: Exhibit No. 5, which is a group of
[9] Exhibit documents that I represent to you — and
[10] you can certainly look through them with your
[11] Counsel — are a set of letters that were produced
[12] to us pursuant to a document production Bates
[13] stamped numbers CRPF 05154 through 05134, if you
[14] want to take a look at those.
[15] These are letters, sir, that we have
[16] been informed were sent to third parties with
[17] respect to the '027 Patent, so I'll give you some
[18] time to look through them, and indeed some of those
[19] although have your name at the bottom are unsigned.
[20] There are letters, and then at the end, there is a
[21] license agreement and a royalty agreement.
[22] Have you seen all of these documents
[23] before?
[24] A: Yes.

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[1] Q: The first one, 05154 dated February 7th,
[2] 2000, is a letter to Heat & Control. By the way,
[3] is there a letter to Alkar with respect to a
[4] license?
[5] A: Yes.
[6] Q: Similar — is it similar to this?
[7] A: Yes.
[8] Q: Is it identical to these, to some of
[9] these letters?
[10] A: I can't tell you that.
[11] Q: All right.
[12] A: It's not identical because it's a
[13] different date.
[14] Q: Okay. Other than the date and the
[15] address and the name, is it — well, we'll talk
[16] about that later.
[17] Are there any other letters other than
[18] these and the Alkar letter whereby Conagra
[19] attempted to inform people of this patent?
[20] A: Not that I'm aware of.
[21] Q: In this first letter, it's unsigned, but
[22] did you — did one indeed go out to Heat & Control
[23] signed by you?
[24] A: To the best of my knowledge, yes.

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[1] Q: I notice in the last paragraph, it
[2] reads, "Others in the industry may approach your
[3] company regarding this patent, and we would
[4] appreciate it if you would inform them that we
[5] intend to aggressively protect all of our rights
[6] under this patent."

[7] Who did you think was going to approach
[8] Heat & Control with respect to this patent?

[9] A: We weren't sure.

[10] Q: Did you have an idea?

[11] A: No.

[12] Q: Were you aware of others using the
[13] process that's outlined in the '027 Patent?

[14] A: No.

[15] Q: Did you write this letter?

[16] A: Parts of it.

[17] Q: Which parts?

[18] A: This was actually a joint effort between
[19] myself and legal counsel.

[20] Q: Legal counsel meaning Dennis Gott or
[21] Mr. Schroeder?

[22] A: Both.

[23] Q: Do you recall which parts you wrote?

[24] A: I did the company address, dear sir or

[1] Q: It doesn't give a price for a license,
[2] does it?

[3] A: No.

[4] Q: At that time, did Conagra intend to
[5] offer a license?

[6] A: I believe so.

[7] Q: Didn't you, Mr. Salm, tell Mike Briggs
[8] that you weren't interested in a license; you just
[9] wanted everybody to quit using the process?

[10] A: I don't recall that.

[11] Q: You could have said, but you don't
[12] recall?

[13] A: I don't think I would have said that.

[14] Q: But you could have?

[15] A: I know that we were interested in
[16] licensing it.

[17] Q: My question is you could have said that
[18] to Mr. Briggs, could you not have?

[19] A: Yes, it's possible, but I don't think I
[20] did.

[21] Q: Let's look at the next letter, which is
[22] 05158. Now, the company offers to a Sunday House
[23] Foods a patent, but there is a condition to it if
[24] you look on the next paragraph. It talks about "to

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[1] madam, and I'm not trying to be funny. I am just
[2] going through it piece by piece. And then I think
[3] I just commented on the rest.

[4] Q: The first eight letters, if you look at
[5] those, don't they describe briefly the process
[6] there in the middle paragraph?

[7] A: Yes.

[8] Q: And they don't offer anyone a license in
[9] that patent, do they, CRPF 05154 through 05147?

[10] A: These aren't in sequential order.

[11] Q: They aren't, are they? I apologize. I
[12] thought they would be. Those first seven letters,
[13] and I'll identify them for the record, 05154.

[14] A: Okay.

[15] Q: 05146, 05141, 05147, 05150, 05152, 05155
[16] and 05157, none of those letters offer a license to
[17] any of those parties, do they?

[18] A: In the last statement, it says, "If your
[19] company has an interest in discussing the
[20] application of this patented process, please
[21] contact me to discuss it," and that leaves it open
[22] for discussions about licensing.

[23] Q: But do they offer a license?

[24] A: It does not offer a license.

[1] all responsible parties who have not infringed
[2] these patents."

[3] Who do you know of that infringed the
[4] patent at the time you wrote that letter in July of
[5] 2000?

[6] A: No one.

[7] Q: Who wrote this letter?

[8] A: Again it was a combination of myself and
[9] Lee.

[10] Q: Why would you put in there "to all
[11] parties who have not infringed the patent" if you
[12] weren't aware of anyone that infringed the patent?

[13] A: I believe that's our legal people
[14] putting it in there. I don't know.

[15] Q: Are you testifying that they could have
[16] known of someone who was infringing the patent?

[17] A: No, they didn't.

[18] Q: How do you know?

[19] A: Because I know they didn't.

[20] Q: Let me go back to the other letters, the
[21] February 7th letters. You talk about an effective
[22] way to — a highly effective and efficient process
[23] for browning whole muscle meat products. Do you
[24] see that?

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[1] A: Uh-huh.
[2] Q: Did you write that?
[3] A: I don't think so.
[4] Q: Is that true?
[5] A: Yes.
[6] Q: Does it save you money everytime you run
[7] a whole muscle meat product through that process?
[8] A: It's actually more expensive than our
[9] previous process.
[10] Q: Then why would you state that it's
[11] highly effective and efficient if it's more
[12] expensive than your old process?
[13] A: For the golden brown product that it
[14] produces, it's pretty efficient and it's pretty
[15] effective.
[16] Q: And you compare that to what other
[17] process?
[18] A: Oil-browning as an example.
[19] Q: Produces a similar product to
[20] oil-browning but it's less expensive?
[21] A: Yes.
[22] Q: How much less expensive?
[23] A: I don't know.
[24] Q: Would you say 10 cents a pound?

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[1] Q: That would be a good indication to you?
[2] A: That's one to me.
[3] Q: Would another indication be that the
[4] margin costs for these products are so close that
[5] if you were to charge somebody 10 cents a pound,
[6] they wouldn't be able to compete?
[7] A: What do you mean by margin costs?
[8] Q: I mean the difference between the cost
[9] it takes you to produce this product and the cost
[10] it takes someone else to produce the product,
[11] they're very similar, aren't they?
[12] A: I don't know what other people are using
[13] for processes to produce their products in the
[14] marketplace.
[15] Q: What about with respect to your profit
[16] with you producing — let me rephrase it. Margin
[17] cost, as it applies to your company, the margin is
[18] so low between the cost to produce the product and
[19] what you can sell it to a third party, 10 cents a
[20] pound is just too high, is it not?
[21] A: I don't know.
[22] Q: You don't know that within your company?
[23] A: No.
[24] Q: Who would know that?

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[1] A: Likely not.
[2] Q: Would you say 5 cents a pound?
[3] A: Could be 5 cents a pound.
[4] Q: How did you come up with this 10 cents a
[5] pound?
[6] A: It was a number to start with.
[7] Q: Well, is it an idea that was given to
[8] you by management, by marketing, or did you just
[9] come up with that number, you personally, Chris
[10] Salm?
[11] A: It's a number that I came up with.
[12] Q: And you gave that number to Dennis Gott?
[13] A: Yes.
[14] Q: Is that a fair royalty in your opinion,
[15] 10 cents per pound?
[16] A: It's probably high.
[17] Q: And why is it high?
[18] A: That's a number to start negotiations
[19] from.
[20] Q: I understand that, but why do you think
[21] that number of 10 cents a pound is high?
[22] A: There are no companies that came to us
[23] and said, yes, we want to license this patented
[24] process.

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[1] A: Tim Etzkorn can talk to the profit
[2] numbers. I don't have those.
[3] Q: And he's going to be here tomorrow?
[4] A: Yes.
[5] Q: Now, let's talk about competitors. Have
[6] you talked to your salespeople about what it
[7] takes — what the difference in cost is between a
[8] comparable product, whole muscle deli product that
[9] you sell to Wendy's or someone would sell to
[10] Wendy's, versus your salesman going in there and
[11] trying to sell it, what's the difference in prices,
[12] do you know?
[13] MR. SCHROEDER: I think you are outside of his
[14] area.
[15] BY MR. CASTRO:
[16] Q: Do you have any idea what those
[17] competitive prices are?
[18] A: Okay. The question is do I have any
[19] idea of what the competitive prices are for
[20] products that would go to Wendy's?
[21] Q: Yes.
[22] A: No, I don't.
[23] Q: Okay. What about to any other third
[24] party?

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[1] A: No, I don't.
[2] Q: So you don't know what — your
[3] salespeople haven't told you what they sell this
[4] new golden brown product for in comparison to what
[5] Jennie-O may sell their similar product for?
[6] A: That's correct.
[7] Q: So you really had no idea when you sent
[8] out this letter what a reasonable royalty would be,
[9] did you?
[10] A: That was the starting point.
[11] Q: What did you expect to receive as a
[12] reasonable royalty?
[13] A: I was willing to negotiate.
[14] Q: Down to what? What was your bottom
[15] dollar price?
[16] A: I didn't have one.
[17] Q: Well, would you just give it to
[18] somebody?
[19] A: It's possible.
[20] Q: Based upon what factors?
[21] A: Factors like who the company was, if
[22] they were interested in doing co-pack business for
[23] us, considerations like that.
[24] Q: And the 10 cents per pound also included

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[1] a \$25,000 upfront license agreement, a license fee,
[2] right? It's not stated in this letter, but it's
[3] attached.
[4] A: I believe that's correct.
[5] Q: Where did you come up with that number?
[6] A: It was a starting point.
[7] Q: And what do you think a reasonable
[8] upfront license fee would be?
[9] A: It all depends on what the licensee
[10] would be willing to pay.
[11] Q: So it just depends upon what the
[12] licensee would be willing to pay?
[13] A: I didn't have any chance to negotiate
[14] those numbers.
[15] Q: Who did you speak with within the
[16] company concerning these — concerning the license
[17] fee and the royalty?
[18] A: I spoke with my boss.
[19] Q: And who is that?
[20] A: At the time, it was Tim Harris.
[21] Q: Is he still with the company?
[22] A: No.
[23] Q: Where is Tim Harris now?
[24] A: Tim is in Chicago, Chicago or one of the

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[1] suburbs.
[2] Q: Where does he work?
[3] A: I don't know that he is.
[4] Q: Is he retired?
[5] A: Somewhat.
[6] Q: Do you have his phone number?
[7] A: I don't have his phone number.
[8] Q: You don't know what suburb he lives in?
[9] A: I believe it's Western Springs.
[10] Q: What was his title at the time this
[11] letter was written?
[12] A: He was the president of Conagra
[13] Refrigerated Prepared Foods.
[14] Q: Are you aware of any other letters that
[15] went out, other than the ones identified in — have
[16] we marked it yet? I guess we haven't. Oh, yes, I
[17] did, 5, that went out to companies?
[18] A: No, not off the top of my head, but I
[19] didn't match these up with any list.
[20] Q: Did you speak with anyone at Jennie-O
[21] Foods with respect to these letters?
[22] A: No.
[23] Q: Did anyone within the company speak to
[24] Jennie-O Foods concerning these letters?

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[1] A: No.
[2] Q: Have you had any communications or
[3] anyone from Conagra have any communications with
[4] Jennie-O with relation to the '027 Patent?
[5] A: No.
[6] MR. CASTRO: Is he going to discuss market
[7] share?
[8] MR. SCHROEDER: No.
[9] BY THE WITNESS:
[10] A: Can we back up a second?
[11] BY MR. CASTRO:
[12] Q: Yes.
[13] A: While I attended the deposition for
[14] Robert Wood.
[15] Q: Yes.
[16] A: At the Wilmur facility, I stepped into
[17] the office of Jeff Ettinger and mentioned that I
[18] would be available to discuss a license if he
[19] wanted to. That's the only conversation I know of
[20] that anyone has had with Jennie-O Foods.
[21] Q: Did you tell Mr. Ettinger he shouldn't
[22] take this case to trial?
[23] A: I don't believe so.
[24] Q: Did you tell anyone you wanted to meet

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[1] with him separate and apart from his lawyers?
[2] A: I don't believe so.
[3] Q: When you talk about the 10 cents per
[4] pound, did you look at the increased yield benefit
[5] to come up with that number?
[6] A: Actually the process for us was a
[7] decrease in yield.
[8] Q: What was the yield of that white turkey
[9] that you produced?
[10] A: It was essentially 100, 99.9.
[11] Q: A different product, though, really,
[12] isn't it?
[13] A: Yes.
[14] Q: Different taste?
[15] A: Sure.
[16] Q: Different color?
[17] A: Actually it's a very similar taste.
[18] Q: But different color?
[19] A: Different color.
[20] Q: And, in fact, actually competes with a
[21] different market, doesn't it? And by that, let me
[22] ask you this before you do. The white turkey
[23] product didn't compete with the oven roasted
[24] product, did it?

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[1] A: Yes, it did.
[2] Q: Did it?
[3] A: Yes.
[4] Q: What other products did it compete with?
[5] A: It would have competed with oil-browned
[6] product, and it would have competed with smoked
[7] product, and it would have competed with the whole
[8] muscle or deli ham products and the list of
[9] products that we described before.
[10] Q: So it's your testimony that if a
[11] consumer like me wanted to go to the deli counter
[12] and I wanted to buy a smoked product, that I also
[13] would be interested in this white turkey breast you
[14] had on the market?
[15] A: No, but consumers generally go to the
[16] counter thinking that they want — they might think
[17] that they want a turkey product or they might think
[18] that they want a sandwich product or they might
[19] think that they want a dinner product. A smaller
[20] percentage of them go to the deli counter thinking
[21] I want a smoked product specifically.
[22] So to the extent that those consumers
[23] are at the deli counter looking for a turkey
[24] product, this would be an option.

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[1] Q: Well, what's the difference in the price
[2] from the white turkey product you produced and this
[3] golden brown product?
[4] A: I believe that either Tim or Sue will
[5] talk about that.
[6] Q: You knew a lot about what the consumer
[7] wants as far as competition. Do you not know what
[8] the price difference is?
[9] A: Are you talking about the price at the
[10] deli or the price to manufacture it?
[11] Q: Both.
[12] A: Both?
[13] Q: How about to manufacture, what's the
[14] difference in price?
[15] A: I can't tell you exactly. It's
[16] something like 5 cents a pound more expensive.
[17] Q: To produce it?
[18] A: Could be 6 cents more expensive.
[19] Q: To produce the golden brown?
[20] A: Yes.
[21] Q: How much more does it sell for at the
[22] deli counter?
[23] A: I don't know that it sells for anymore.
[24] Q: I'm going to hand you a set of documents

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[1] that I'll mark as one Exhibit. What are we on, 6?
[2] I'll ask if you can identify those.
[3] MR. SCHROEDER: When you say identify —
[4] BY MR. CASTRO:
[5] Q: Well, just look through them and see if
[6] these are documents that you've seen before in the
[7] records of Conagra?
[8] MR. SCHROEDER: Are you asking him not if he
[9] has seen them in the course of the lawsuit but if
[10] he has seen them in the file of the company apart
[11] from the lawsuit?
[12] MR. CASTRO: That's correct, and I won't ask
[13] him specific questions on all of them.
[14] MR. SCHROEDER: I just want to be sure we have
[15] an understanding of what the question is before he
[16] spends a lot of time going through them and then
[17] has to go through them again.
[18] BY MR. CASTRO:
[19] Q: By the way, what I have handed you,
[20] Mr. Salm, are a group of documents that are either
[21] written from Unitherm — by Unitherm to Conagra or
[22] from Conagra to Unitherm?
[23] A: There is a document in here for
[24] Jennie-O. Did you want this in here?

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[1] Q: No. Have you seen those documents
[2] before the lawsuit was filed?
[3] A: Before the lawsuit?
[4] Q: Yes.
[5] A: I've seen some of them.
[6] Q: Did you see the last letter dated April
[7] 27th of 1998? It was written to you and Chris Salm
[8] where it informs you, you know — it's to Prem
[9] Singh and Chris Salm. "Dear Sirs: You know how
[10] keen we are to get business started with Armour
[11] Swift-Eckrich. I enclose three contacts who could
[12] give you references on the RapidFlow Oven," and he
[13] lists Plantation Foods and House of Raeford.
[14] Do you remember that letter?
[15] A: I don't.
[16] Q: Do you remember receiving this letter?
[17] A: I don't.
[18] Q: Have you discussed with Prem Singh this
[19] letter?
[20] A: No.
[21] Q: Any other letters you recall not seeing?
[22] MR. SCHROEDER: Do you recall not seeing?
[23] BY THE WITNESS:
[24] A: In this stack?

[1] A: That might be quicker.
[2] I recall seeing a document dated
[3] February 24th, 1998.
[4] Q: That would be a proposal for the in-line
[5] or for the browning smoking line? Is that the
[6] document you've seen before?
[7] A: The following quotation includes
[8] specifications for your browning smoking line.
[9] Q: Right. And that's Bates stamped
[10] U-02018?
[11] A: Yes.
[12] Q: And U-02034?
[13] A: Yes.
[14] Q: It's fair to say you had not seen any of
[15] these documents prior to filing the patent, the
[16] '027 Patent, is that correct?
[17] A: That's correct.
[18] Q: Okay. Were you asked to help produce
[19] documents in this file, helped to gather documents
[20] for this lawsuit, I mean? Were you asked to help?
[21] A: Yes.
[22] Q: Did you ever attempt to reach Ted Berry
[23] to ask if he had any documents related to this
[24] lawsuit?

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[1] MR. SCHROEDER: How do you recall not seeing a
[2] letter?
[3] BY MR. CASTRO:
[4] Q: Prior to the lawsuit.
[5] A: I don't recall seeing U-06066.
[6] Q: All right.
[7] A: I don't recall seeing —
[8] MR. SCHROEDER: Just a second. When the
[9] witness has indicated that, that would be 66
[10] through 69.
[11] MR. CASTRO: Budgetary Proposal.
[12] MR. SCHROEDER: Right.
[13] BY MR. CASTRO:
[14] Q: What about the October 9th, '95 letter?
[15] A: Not before the lawsuit.
[16] Q: The letter to Arni Mikelberg. How about
[17] the October 16, 1995 letter to Prem Singh?
[18] A: Not before the lawsuit.
[19] Q: December 21st, '95 letter to Prem Singh?
[20] A: Not before the lawsuit.
[21] Q: Next document, invoice?
[22] A: Not before the lawsuit.
[23] Q: What documents do you recall seeing?
[24] Would that be quicker?

[1] A: I have not.
[2] Q: Have you spoken to Ted Berry since this
[3] lawsuit was filed?
[4] A: I have not.
[5] Q: And you did ask Prem Singh for all of
[6] his documents, right?
[7] A: Yes.
[8] Q: What about Larry Roulie?
[9] A: Larry Roulie, I did not speak to Larry.
[10] Q: Does Larry still work for the company?
[11] A: Yes.
[12] Q: What about Robert Lauffenburger, did you
[13] ask Mr. Lauffenburger for any documents?
[14] A: No.
[15] Q: Does he still work for the company?
[16] A: No.
[17] Q: When did he leave the company, if you
[18] know?
[19] A: It was approximately 1996.
[20] Q: What about J.B. Weatherspoon, did you
[21] ask Mr. Weatherspoon about any documents?
[22] A: Yes.
[23] Q: And did he provide those to you?
[24] A: J.B. went through all of his files and

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[1] provided all of his documents that he could find.
[2] Q: Did you talk to Mr. Weatherspoon about
[3] the lawsuit?
[4] A: Yes.
[5] Q: What did you talk about?
[6] A: We talked to him about the lawsuit to
[7] let him know that we were involved in a lawsuit and
[8] about his recollections about the testing that was
[9] done prior to his retirement.
[10] Q: Did he recall the testing that was done
[11] at the facility, your testing facility?
[12] A: In our pilot plant?
[13] Q: That's right.
[14] A: He was aware of it.
[15] Q: Did he tell you what the results of that
[16] test were?
[17] A: Yes.
[18] Q: And what were they?
[19] A: What he said is that we could produce a
[20] smoked product that looked okay but the smoke
[21] flavor didn't match, and we could produce an oven
[22] roasted project but it was produced with what he
[23] thought was acceptable and the business guys didn't
[24] think was acceptable appearance and textures and

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[1] those types of things.
[2] Q: Anything else?
[3] A: I think that was — I mean there may
[4] have been other things.
[5] Q: Did you ever talk to Frank Carroll about
[6] documents he may have regarding this lawsuit?
[7] A: Yes.
[8] Q: And did he produce those to you?
[9] A: Yes.
[10] Q: Were there any?
[11] A: None.
[12] Q: Does he still work for the company?
[13] A: No.
[14] Q: What about Eric Christiansen?
[15] A: I don't know.
[16] Q: You don't know about Eric?
[17] A: No.
[18] Q: What about Mike Bliss? Did you ask Mike
[19] Bliss whether he had any documents?
[20] A: No.
[21] Q: Mike still work for the company?
[22] A: No.
[23] Q: What about Kent Kring?
[24] A: Yes.

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[1] Q: Did you ask him whether he had any
[2] documents?
[3] A: Yes.
[4] Q: Did he produce to you any?
[5] A: No.
[6] Q: What about Syed?
[7] A: Yes.
[8] Q: Did he produce to you any documents?
[9] A: Yes.
[10] Q: But he didn't produce to you this letter
[11] of January 17, '97?
[12] A: Correct.
[13] Q: U-06223?
[14] A: Not that I'm aware of.
[15] Q: What about Ronald Albrecht?
[16] A: No.
[17] Q: Daryl Elston, did you ask him for any
[18] documents?
[19] A: No.
[20] Q: Does he still work for the company?
[21] A: I don't know.
[22] Q: What about Dennis Des Lauriers?
[23] A: Dennis Des Lauriers, yes.
[24] Q: Did you ask him for documents?

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[1] A: Yes.
[2] Q: Did he produce to you any?
[3] A: No.
[4] Q: Including this April 21st, '97 document
[5] Bates stamped U-04863?
[6] A: To the best of my knowledge.
[7] Q: What about Rod Liddle?
[8] A: No.
[9] Q: Did you ask him for any?
[10] A: Yes.
[11] Q: Does he still work for the company?
[12] A: Yes.
[13] Q: Are you aware of some communications
[14] that occurred between your lawyers and Mr. David
[15] Howard shortly after the testing that was done in
[16] 1998?
[17] A: Yes.
[18] Q: Did you help your lawyers prepare the
[19] letters that went to Unitherm?
[20] A: I believe I reviewed those letters.
[21] Q: You reviewed those letters for accuracy
[22] and content before they went out?
[23] A: Yes.
[24] Q: I am going to hand you what I'll mark as

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[1] No. 7, ask you if you can identify that?
[2] Isn't it true that you did not disclose
[3] to Unitherm trade secret information regarding
[4] browning of whole muscle meat products, but in fact
[5] it was simply with respect to a golden brown color
[6] you wished to obtain for your products?
[7] A: No.
[8] Q: So it's now your testimony that you
[9] disclosed to Unitherm in 1998 how to brown whole
[10] muscle meat products?
[11] MR. SCHROEDER: I object to your question
[12] insofar as it implies that the witness has earlier
[13] testified to something else.
[14] BY MR. CASTRO:
[15] Q: Earlier you testified that the trade
[16] secret you disclosed to Unitherm dealt with the
[17] golden brown color you wished to achieve, correct?
[18] A: Yes, and the process to achieve that.
[19] Q: Oh, now it's the process to achieve
[20] that?
[21] MR. SCHROEDER: Object to the question as far
[22] as you used the word "now."
[23] BY MR. CASTRO:
[24] Q: And what's the process to achieve that?

[1] run the product through that process and achieve a
[2] different color, couldn't you?
[3] A: I suppose you could, sure.
[4] Q: So now I am asking you what is it that
[5] you disclosed to Unitherm in February of '98 that
[6] was a trade secret?
[7] A: There could have been dilutions that we
[8] used, it could have been a whole host of things
[9] that added up to delivering this golden brown
[10] color.
[11] Q: Well, what were they? Let me break it
[12] down. Products cooked in a bag, is that a trade
[13] secret?
[14] A: No.
[15] Q: Products removed from the bag and the
[16] purge removed, is that a trade secret?
[17] A: No.
[18] Q: What about when you dry the product off,
[19] is that a trade secret?
[20] A: No.
[21] Q: What about when you take and you dip the
[22] product in a liquid pyrolysis product, is that a
[23] trade secret?
[24] A: No.

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[1] A: The process to achieve that is described
[2] in the patent and it's a combination of factors.
[3] Q: I will ask you again then what is it
[4] that you disclosed to Unitherm in February of 1998
[5] that was a trade secret other than the golden brown
[6] color that you wanted to achieve in your product?
[7] A: It was the entirety of the process to
[8] achieve the golden brown color and the golden brown
[9] color itself and our intent to market the golden
[10] brown product.
[11] Q: What's the process? Are you talking
[12] about taking a whole muscle meat product and
[13] removing the purge, is that part of it?
[14] A: It's part of the process.
[15] Q: What about drying the product off, is
[16] that part of the trade secret you showed to them?
[17] A: The process in its entirety to produce a
[18] golden brown color is what we went through with
[19] David Howard at the Ponca City.
[20] Q: So that included this entire process
[21] that's outlined in this flow chart, Exhibit No. 2?
[22] A: To achieve a golden brown color.
[23] Q: Well, you could run that product and
[24] achieve a different color, couldn't you? You could

[1] Q: What about when you run that product
[2] through this Unitherm oven for seven to ten
[3] minutes, is that a trade secret?
[4] A: No.
[5] Q: So what's the trade secret?
[6] A: It's the combination of all those
[7] factors that deliver a golden brown color.
[8] Q: Chad Anderson, did he help you — did he
[9] help you put the chemicals together to come up with
[10] the right combination of product, liquid product on
[11] meat product to achieve this golden brown color?
[12] A: Chad supplied the Maillose that we used
[13] in our concentrations.
[14] Q: Did he provide any expertise with
[15] respect to the dilution and/or application of that
[16] Maillose to the whole muscle meat products?
[17] A: Not that I am aware of.
[18] Q: But he could have?
[19] A: It's possible.
[20] Q: And, indeed, so could have David Howard?
[21] A: It's possible.
[22] Q: The next is a letter that I'll mark as 8
[23] from David Howard to Mr. Craft dated August 3rd,
[24] 1998. Have you seen that letter and the attached

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[1] confidentiality agreement before the lawsuit was
[2] filed?
[3] A: Yes.
[4] Q: Did you discuss this letter with
[5] Mr. Craft?
[6] A: Yes.
[7] Q: Mr. Craft writes a response letter that
[8] I'll mark as No. 9 that I'll hand to you.
[9] Oh, by the way, do you notice in that
[10] letter that it says that — the middle paragraph —
[11] "your client was allowed to view trade secrets
[12] developed by Unitherm." Do you agree with that
[13] statement?
[14] A: To the extent that that applied to the
[15] debagging system, yes.
[16] Q: Okay. But not as it applies to the
[17] Unitherm oven and the browning process run through
[18] the Unitherm oven?
[19] A: Correct.
[20] Q: I will hand you what I'll mark as No. 9
[21] and ask you if you can identify that document?
[22] It's, for the record, an August 17, 1998 letter
[23] from Mr. Craft to Mr. Howard.
[24] Did you approve of the content of this

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[1] letter before it went to Mr. Howard?
[2] A: Yes.
[3] Q: And it talks about the trade secret
[4] information specifically relating to browning whole
[5] muscle meat products in the bag?
[6] A: Yes.
[7] Q: Is that intended to describe the process
[8] that's contained in the '027 Patent?
[9] A: No.
[10] Q: What is it intended to describe?
[11] A: While we were visiting and running these
[12] tests, Prem Singh described an idea of
[13] pre-browning — of browning whole muscle meat
[14] product in the finished bag, and that's what that
[15] describes.
[16] Q: Well, Mr. Salm, why isn't the other
[17] trade secret information described in this letter
[18] of August 17, 1998, do you know?
[19] A: I believe there was a letter that
[20] specifically asked about whether or not we were
[21] interested in pursuing or would allow David Howard
[22] to pursue the brown in bag process.
[23] Q: Well, this is responding to the August
[24] 3rd, 1998 letter, is it not? See the first

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[1] sentence?
[2] A: Yes, I do.
[3] Q: I don't see anywhere in this August 3rd
[4] letter, do you, where it talks about what you just
[5] testified to, do you?
[6] A: No, I don't. But I recall seeing a
[7] letter from David Howard expressing an interest in
[8] pursuing the commercialization or development of
[9] that brown in bag process. I don't see it here.
[10] Q: And, in fact, this letter isn't
[11] responding to the letter you're discussing. It's
[12] responding to the August 3rd letter?
[13] A: Correct, unless there is another August
[14] 3rd letter.
[15] Q: And if there is not, it's simply
[16] responding to that other Exhibit?
[17] MR. SCHROEDER: Objection, calls for
[18] speculation. The witness did not write this
[19] letter.
[20] BY MR. CASTRO:
[21] Q: Did you help write it?
[22] A: No.
[23] Q: But you approved of the contents of this
[24] letter before it went out, didn't you?

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[1] A: I reviewed it, yes.
[2] Q: Did you have any objection to this
[3] letter?
[4] A: No.
[5] Q: Well, earlier I asked you about all
[6] these trade secrets you disclosed to Unitherm at
[7] the time of the demonstration in '98, and you never
[8] mentioned this browning in the bag. Did you forget
[9] that?
[10] A: Yes, I did.
[11] Q: And at this time, you had already filed
[12] your patent application, hadn't you, on the
[13] process, correct?
[14] A: Yes.
[15] Q: Well, how come you didn't tell Unitherm?
[16] Do you know why?
[17] A: That was up to our attorneys.
[18] Q: Well, when you got this other letter
[19] in — this July 28th letter of '98 from Mr. Craft,
[20] did you tell Mr. Craft that he ought to put in
[21] there that you filed a patent on this browning of
[22] whole muscle meat product?
[23] A: I believe that was discussed.
[24] Q: But it wasn't put in this letter, was

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[1] it?
[2] A: No.
[3] Q: I mean you told other people that you
[4] had filed a patent, didn't you?
[5] A: No.
[6] Q: You didn't tell anyone else?
[7] A: No.
[8] Q: Didn't tell anyone else you were
[9] intending to file a patent?
[10] A: No.
[11] Q: You had already decided to file a
[12] patent, correct?
[13] A: Yes.
[14] Q: Did anyone else tell you that they had
[15] intended to file a patent on this browning process
[16] that's described in the '027 Patent?
[17] A: No.
[18] Q: No one else informed you that they had
[19] already filed a patent on that process?
[20] A: Not that I am aware of.
[21] Q: Last letter, Exhibit 10, ask you if you
[22] can identify that? For the record, it's an August
[23] 20th, 1998 letter from Mr. Howard to Mr. Craft.
[24] Did you see that letter before?

[1] A: Sure.
[2] Q: Whose decision was it not to respond to
[3] this letter?
[4] A: I don't recall.
[5] MR. SCHROEDER: I object to the question. It
[6] assumes a fact not in evidence.
[7] BY MR. CASTRO:
[8] Q: Are you aware of whether — did you
[9] respond to this letter in writing to Mr. Howard?
[10] A: I don't recall.
[11] Q: PureLight, you looked at some browning
[12] technology of theirs, is that right?
[13] A: No.
[14] Q: Oh, you didn't?
[15] A: No.
[16] Q: You didn't discuss with PureLight the
[17] browning of meat by using a combination of light
[18] and browning agents, specifically Maillose and
[19] equivalents?
[20] A: Yes, we did.
[21] Q: And, in fact, you brought — Prem Singh
[22] brought turkey breasts, did he not, took them to
[23] their facility and put different flavoring
[24] chemicals on those products and then browned them?

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[1] A: I believe I have.
[2] Q: Did you see that prior to the filing of
[3] the lawsuit?
[4] A: Yes.
[5] Q: Were you provided that letter by your
[6] Counsel in order to respond?
[7] A: Yes.
[8] Q: Why did you not respond?
[9] A: I don't recall. That was our legal
[10] Counsel's decision.
[11] Q: Well, do you see at the bottom, that
[12] last paragraph — well, the whole letter. Doesn't
[13] it describe the process in a large part that's
[14] described in the '027 Patent?
[15] A: No, it doesn't describe the '027 Patent
[16] process.
[17] Q: Doesn't describe the apparatus needed to
[18] perform the '027 Patent?
[19] A: You could probably take these and put
[20] them in a situation where it would produce a golden
[21] brown color.
[22] Q: Yes. Indeed they talk about it as an
[23] in-line smoking and roasting system, do they not,
[24] in this letter?

[1] A: Yes.
[2] Q: And why did he do that?
[3] A: Well, he wanted to see what UV light
[4] would do on those products.
[5] Q: The laser light, too?
[6] A: I don't know that he tested the laser
[7] light at that facility.
[8] Q: You can perform the process by using UV
[9] light, can you not?
[10] A: I'm not sure.
[11] Q: Did you run any type of tests out of
[12] PureLight with regards to this '027 Patent?
[13] A: No.
[14] Q: Was there any confidential information
[15] disclosed to PureLight with regards to the
[16] browning — this browning process?
[17] A: I'm not sure. I wasn't at the
[18] discussion.
[19] Q: I will hand that to you. That's a
[20] letter I'll mark as the last Exhibit, No. 11. Have
[21] you seen that letter before?
[22] A: Yes, I believe I have.
[23] Q: And did you review that letter before it
[24] went out on February 12, 1998?

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[1] A: I'm not sure of that.
[2] Q: That's a letter, as I stated, dated
[3] February 12, '98 to Mr. Rosenthal. Who is
[4] Mr. Rosenthal?
[5] A: I don't know.
[6] Q: Bob Schroeder, your lawyer, is here
[7] today. Do you see where it states that certain
[8] confidential proprietary information relating to
[9] the browning of meat by using a combination of
[10] light and browning agents, specifically Maillose
[11] and equivalents, was shared with PureLight?
[12] What does that concern, do you know?
[13] A: I believe that Prem used some Maillose
[14] solution in his ultraviolet light system.
[15] Q: And didn't you indeed tell PureLight that
[16] your primary focus was a way to brown whole muscle
[17] meat products and that they should focus their
[18] efforts in that direction if they wanted to gain
[19] any of your business?
[20] A: I don't recall that.
[21] Q: What's the middle paragraph, do you
[22] understand it? It says "It is our further
[23] understanding that you have indicated you have
[24] filed a patent application based on the above

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[1] A: For us to test.
[2] Q: Yes.
[3] A: For us to test.
[4] Q: Oh, it was for you to test?
[5] A: Yes.
[6] Q: Did you tell them what to set up?
[7] A: I don't recall that.
[8] Q: No. Let me ask it again. Did you,
[9] Chris Salm, tell them what to set up?
[10] A: I don't recall me telling them what to
[11] set up.
[12] Q: What about Prem Singh, do you know
[13] whether he did?
[14] A: I don't know.
[15] MR. SCHROEDER: You don't represent PureLight,
[16] do you, Mr. Castro?
[17] MR. CASTRO: We're going to be amending our
[18] witness list.
[19] BY MR. CASTRO:
[20] Q: Who is Roy Cantou?
[21] A: Roy Cantou is our purchasing —
[22] equipment purchasing agent.
[23] Q: Have you asked Mr. Cantou for any
[24] documents?

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[1] information."
[2] A: As I recollect, I believe the
[3] PureLight people told Prem Singh that they were
[4] going to file a patent application based on Prem's
[5] idea to use UV light with Maillose.
[6] Q: Did Mr. Singh inform PureLight that he
[7] intended to purchase a convection oven to brown
[8] turkey breasts using a browning agent called
[9] Maillose?
[10] A: I'm not sure that he told them that.
[11] Q: Was there any other process you were
[12] working on at that time that was different than the
[13] one that's described in the '027 Patent?
[14] A: I'm sure that there were.
[15] Q: That dealt with browning of whole muscle
[16] meat products using a — using Maillose?
[17] A: That's possible.
[18] Q: Is it?
[19] A: Sure.
[20] Q: Were you at that time?
[21] A: It's possible.
[22] Q: When you went to the facility at
[23] Unitherm, do you know why they had a full line on
[24] display for you?

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[1] A: Yes.
[2] Q: Did he produce to you any?
[3] A: Yes.
[4] Q: Is that a document that he produced to
[5] you? It's a letter dated June 1st, 1998 from
[6] Unitherm.
[7] A: I don't recall. It's possible. I've
[8] seen a lot of documents.
[9] Q: Do you recall whether you had seen that
[10] document prior to the filing of the lawsuit?
[11] A: No, I don't.
[12] MR. CASTRO: I am just going to check my
[13] notes, and I think I'm done.
[14] (WHEREUPON, a short break was
[15] taken.)
[16] MR. CASTRO: I will pass the witness.
[17] EXAMINATION
[18] BY MR. SCHROEDER:
[19] Q: Dr. Salm, I'll be very brief. You were
[20] asked earlier about the color of the product as it
[21] emerged from the Unitherm oven that you tested in
[22] '98, and you described that color as stable.
[23] I'd just like you to explain what you
[24] mean by that.

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[1] A: I don't believe that I did describe it
[2] as stable.
[3] Q: Then I apologize. You used that word
[4] anyway.
[5] A: Hopefully I didn't. Because I know that
[6] color will change over time after you finish
[7] processing, and I know that that particular product
[8] did change, so it's not a stable — it was not a
[9] stable color, and, in fact, our current products
[10] will fade to some extent over time.
[11] Q: Maybe I was referring to the wrong point
[12] in your testimony. At some point, you referred to
[13] product coming from an oven, maybe it was your own
[14] oven, as being stable. I think maybe that was
[15] correct. It was that use of the word stable that I
[16] wanted to ask you about.
[17] A: Okay.
[18] Q: What do you mean by stable, or what does
[19] the word stable mean to you in that context?
[20] A: Well, I know that the product coming out
[21] of our oven is consistent, and maybe that's what we
[22] were talking about.
[23] Q: Does that color change over time after
[24] it comes out of the oven?

[1] UNITED STATES DISTRICT COURT
[2] WESTERN DISTRICT OF OKLAHOMA
[3] UNITHERM FOOD SYSTEMS, INC.,)
[4] an Illinois corporation, et al.,)
[5] Plaintiffs,)
[6] vs.) No. CIV 01-347-C
[7] SWIFT-ECKRICH, INC.,)
[8] Defendant.)
[9]
[10] I hereby certify that I have read the
[11] foregoing transcript of my deposition given at the
[12] time and place aforesaid, consisting of Pages 1 to
[13] 301, inclusive, and I do again subscribe and make
[14] oath that the same is a true, correct and complete
[15] transcript of my deposition so given as aforesaid,
[16] and includes changes, if any, so made by me.
[17]
[18] CHRISTOPHER SALM
[19]
[20] SUBSCRIBED AND SWORN TO
[21] before me this day
[22] of , 2002
[23]
[24] NOTARY PUBLIC

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[1] A: Yes.
[2] Q: And what happens to it?
[3] A: It becomes a little lighter.
[4] Q: And is the change predictable?
[5] A: Yes.
[6] MR. SCHROEDER: Thank you. No further
[7] questions.
[8] MR. CASTRO: I have nothing further. Bob, do
[9] you want to advise him to read and sign?
[10] MR. SCHROEDER: Yes.
[11] FURTHER DEPONENT SAITH NOT.
[12]
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[1] STATE OF ILLINOIS)
[2]) SS:
[3] COUNTY OF WILL)
[4] I, GAIL LIVIGNI, a Notary Public within
[5] and for the County of Will, State of Illinois, and
[6] a Certified Shorthand Reporter of said state, do
[7] hereby certify:
[8] That previous to the commencement of the
[9] examination of the witness, the witness was duly
[10] sworn to testify the whole truth concerning the
[11] matters herein;
[12] That the foregoing deposition transcript
[13] was reported stenographically by me, was thereafter
[14] reduced to typewriting under my personal direction
[15] and constitutes a true, complete and correct record
[16] of the testimony given and the proceedings had;
[17] That the said deposition was taken
[18] before me at the time and place specified;
[19] That I am not a relative or employee or
[20] attorney or Counsel, nor a relative or employee of
[21] such attorney or Counsel for any of the parties
[22] hereto, nor interested directly or indirectly in
[23] the outcome of this action.
[24]

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[1] IN WITNESS WHEREOF, I do hereunto set my
[2] hand and affix my seal of office at chll, this
[3] 20th day of February, 2002.
[4]
[5]
[6]
[7]
[8] Notary Public, Will County,
[9] Illinois.
[10] My commission expires 9/8/03
[11]
[12] C.S.R. Certificate No. 84-1965
[13]
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